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2024FCA1430-summary

FEDERAL COURT OF AUSTRALIA

Deeming v Pesutto (No 3) [2024] FCA 1430

File number(s):	VID 1023 of 2023
Judgment of:	**O'CALLAGHAN J**
Date of judgment:	12 December 2024
Catchwords:	**DEFAMATION –** proceeding against the Leader of the Opposition in the Victorian Parliament brought by a Member expelled from the Parliamentary Liberal Party – imputations pleaded in respect of five impugned publications – consideration of whether imputations conveyed — consideration of whether publication of defamatory matter about the applicant has caused, or is likely to cause, serious harm to her reputation within the meaning of s 10A(1) of the *Defamation Act 2005* (Vic) (the **Act**) – serious harm found – defences of public interest under s 29A of the Act, honest opinion under s 31 of the Act, *Lange* qualified privilege and contextual truth under s 26 of the Act pleaded – where defences not made out – where applicant sought general damages for non-economic loss – where applicant sought aggravated damages – assessment of damages – quantification of damages
Legislation:	*Defamation Act 2005* (Vic) ss 10A, 10A(1), 20, 20(1), 20(2), 26, 29A, 29A(1)(b), 29A(3)(a), 29A(3)(g), 31, 31(4), 31(4)(a), 31(5)(b)(i), 34, 35(2), 35(2A), 35(2B), 36 *Evidence Act 1995* (Cth) ss 56, 81 *Judiciary Act 1903* (Cth) s 79 *Defamation Act 2013* (UK) s 1
Cases cited:	*Agustin-Bunch v Smith (No 3)* [2023] VSC 277 *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158 *Australian Broadcasting Corp v Chau Chak Wing* (2019) 271 FCR 632 *Australian Broadcasting Corp v McBride* (2001) 53 NSWLR 430 *Banks v Cadwalladr* [2019] EWHC 3451 (QB) *Banks v Cadwalladr* [2023] KB 524 *Barilaro v Google LLC* [2022] FCA 650 *Barron v Vines* [2016] EWHC 1226 (QB) *Bazzi v Dutton* (2022) 289 FCR 1 *Broome v Cassell & Co Ltd* [1972] AC 1027 *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 *Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519 *Channel Seven Adelaide Pty Ltd v Manock* (2007) 232 CLR 245 *Chau v Australian Broadcasting Corp (No 3)* [2021] FCA 44; (2021) 386 ALR 36 *Deeming v Pesutto* [2024] FCA 951 *Dovuro Pty Ltd v Wilkins* (2003) 215 CLR 317 *Dutton v Bazzi* [2021] FCA 1474 *Economou v de Freitas* [2016] EWHC 1853 (QB); [2017] EMLR 4 *Feldman v Polaris Media Pty Ltd* (2020) 102 NSWLR 733 *Greenwich v Latham* [2024] FCA 1050 *Hanson v Burston* [2023] FCAFC 124; (2024) 413 ALR 299 *Herron v HarperCollins Publishers Australia Pty Ltd* (2022) 292 FCR 336 *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 *Jones v Dunkel* (1959) 101 CLR 298 *KSMC Holdings Pty Ltd v Bowden* (2020) 101 NSWLR 729 *Lachaux v Independent Print Ltd* [2020] AC 612 *Lange v Australian Broadcasting Corp* (1997) 189 CLR 520 *Lee v Wilson* (1934) 51 CLR 276 *Lehrmann v Network Ten Pty Ltd (Trial Judgment)* [2024] FCA 369 *Lewis v Daily Telegraph Ltd* [1963] 1 QB 340 *Lewis v Daily Telegraph Ltd* [1964] AC 234 *Massoud v Nationwide News Pty Ltd* (2022) 109 NSWLR 468 *Murdoch v Private Media Pty Ltd* [2022] FCA 1275 *Nassif v Seven Network (Operations) Ltd* [2021] FCA 1286 *O'Hagan v Nationwide News Pty Ltd* (2001) 53 NSWLR 89 *Palmer Bruyn & Parker Pty Ltd v Parsons* (2001) 208 CLR 388 *Peros v Nationwide News Pty Ltd (No 3)* [2024] QSC 192 *Plato Films Ltd v Speidel* [1961] AC 1090 *Prince Albert v Strange* (1849) 2 De G & Sm 652; 64 ER 293 *Riley v Sivier* [2022] EWHC 2891 (KB); [2023] EMLR 6 *Rush v Nationwide News Pty Ltd (No 2)* [2018] FCA 550; (2018) 359 ALR 564 *Russell v Australian Broadcasting Corp (No 3)* (2023) 303 FCR 372 *Russell v Australian Broadcasting Corp* [2023] FCA 38 *Stead v Fairfax Media Publications Pty Ltd* [2021] FCA 15; (2021) 387 ALR 123 *Stocker v Stocker* [2020] AC 593 *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153 *Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513 *Triggell v Pheeney* (1951) 82 CLR 497 *V'landys v Australian Broadcasting Corp* [2023] FCAFC 80 *Wilson v Mendelsohn* [2024] EWHC 821 (KB) *Wood v Cox* (1888) 4 TLR 652 at 656
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Counsel for the Applicant:	S Chrysanthou SC with B Dean
Solicitor for the Applicant:	Giles George
Counsel for the Respondent:	M J Collins AM KC with T J Mullen, H Jager and D Dexter
Solicitor for the Respondent:	MinterEllison

ORDERS

VID 1023 of
2023

BETWEEN: MOIRA DEEMING
Applicant

AND: JOHN PESUTTO
Respondent

ORDER MADE BY: O'CALLAGHAN J

DATE OF ORDER: 12 DECEMBER 2024

THE COURT ORDERS THAT:

1. The proceeding be adjourned to a date to be fixed for the making of final orders.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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O'CALLAGHAN J

INTRODUCTION

1 The applicant, Mrs Moira Deeming MLC, is a politician. She is a Member of the Victorian Parliament for the Western Metropolitan Region in the Legislative Council. She was elected on 26 November 2022.

2 She is a member of the Victorian Liberal Party; and from 26 November 2022 until her expulsion on 12 May 2024, she was a member of the Victorian Parliamentary Liberal Party.

3 The respondent, Mr John Pesutto MP, is also a politician. He is a Member of the Victorian Parliament for the electoral district of Hawthorn in the Legislative Assembly, and was also elected on 26 November 2022. He is a member of the Victorian Liberal Party. And since 8 December 2022, he has been the Leader of the Opposition and the Leader of the Victorian Parliamentary Liberal Party (which I shall also refer to as **the party**).

4 Mrs Deeming is, and has been for some years, a passionate advocate for the preservation or reinstatement of sex-based rights and safeguards for women and children (such as female only bathrooms and changerooms).

5 On Saturday 18 March 2023, she attended and briefly spoke at a "Let Women Speak" rally on the steps of Parliament House in Melbourne, conducted by a UK-based organisation called Standing for Women (**SFW**). I will refer to this as the **LWS rally**. SFW was founded by a woman named Ms Kellie-Jay Keen (sometimes also known as Posie Parker) who led the LWS rally.

6 At around the same time, various other protestors gathered to express their views. They included "trans rights" and gender diverse activists, and a group of men in black clothing who were identified as members of the National Socialist Network, and were described as "Nazis" or "neo-Nazis".

7 As a result of what occurred in and around the steps of Parliament House that day, Mr Pesutto put matters in train to have Mrs Deeming expelled from the party, which ultimately occurred.

8 In the course of doing so, over the course of a few days after the rally, Mr Pesutto issued a media release, gave radio and TV interviews, held a press conference and caused to be distributed to media outlets an "expulsion motion and dossier".

9 Mrs Deeming alleged in this proceeding that, in the course of doing so, Mr Pesutto defamed her, including because he falsely accused her of associating with neo-Nazis. She sought, among other things, an order that he pay her damages, including aggravated damages.

10 Mr Pesutto admitted that he defamed Mrs Deeming, but not in the way she alleged. He contended that Mrs Deeming's pleaded imputations are not carried and that he is entitled to rely on defences, including of public interest and honest opinion. Accordingly, Mr Pesutto submitted that the proceeding against him should be dismissed.

11 Ms S Chrysanthou SC with Mr B Dean of counsel appeared for Mrs Deeming.

12 Dr M J Collins AM KC appeared with Mr T J Mullen, Ms H Jager and Mr D Dexter of counsel for Mr Pesutto.

13 The trial of the proceeding occupied 19 hearing days. Closing written submissions, including a number of highly detailed schedules, comprised almost 1,000 pages, as follows:

(a) The applicant's closing submissions dated 18 October 2024 (**ACS**) plus:

(i) Annexure A, entitled "Chronology of the Let Women Speak Rally" (**ACS Annexure A**);

(ii) Annexure B, entitled "Extent of Publication" (**ACS Annexure B**);

(iii) Annexure C, entitled "Respondent's allegations regarding 'controversy' about Mrs Deeming, media reporting about her, and her prior reputation" (**ACS Annexure C**);

(iv) Annexure D, entitled "Abusive emails / messages received by Mrs Deeming following the Publications" (**ACS Annexure D**); and

(v) Annexure E, entitled "Social media posts about Mrs Deeming following the Media Release" (**ACS Annexure E**).

(b) The respondent's closing submissions dated 18 October 2024 (**RCS**) plus:

(i) Schedule A, entitled "Detailed Factual Chronology and Summary of Evidence" (**RCS Schedule A**);

(ii) Schedule B, entitled "Table of alleged republications" (**RCS Schedule B**); and

(iii) Schedule C, entitled "Table of media and social media prior to Publications" (**RCS Schedule C**).

14 Over 40 affidavits were filed and relied upon by the parties, and more than 800 exhibits were tendered in evidence.

15 Given the very large volume of material, I have endeavoured to include in these reasons references to the court book, the transcript, the exhibits and the submissions where it is helpful to do so.

16 The affidavits, submissions, exhibits and other publicly accessible documents can be accessed on the Online File.

WITNESSES

17 Mrs Deeming read and relied upon two affidavits sworn by her on 27 May and 23 July 2024 respectively (Court Book Part B – Affidavits (**CB**):1; CB:2). She also relied on the evidence of:

(1) Mr Andrew Deeming, her husband (CB:4);

(2) Mr Geoffrey Campey, Principal of Social Media Evidence Experts (Court Book Part B – Expert Evidence (**CBE**));

(3) Ms Raewyn Clark, a member of the Liberal Party who attended the LWS rally (CB:3);

(4) Ms Angela Dennis, a woman who attended the LWS rally (CB:5);

(5) Mr Christopher Duke, a Senior Minister of the Presbyterian Church (CB:6);

(6) Mr Rukshan Fernando, a videographer and independent journalist who filmed the LWS rally and the other groups and protestors in the vicinity of Parliament House on 18 March 2023 (CB:7);

(7) Ms Renee Gorman, who works part-time as an electoral officer for Mrs Deeming (CB:8);

(8) Ms Renee Heath MLC, the Liberal Member for the Eastern Victoria Region in the Victorian Legislative Council (and between December 2022 and May 2023, Secretary of the Victorian Parliamentary Liberal Party) (CB:9; CB:10);

(9) Senator Sarah Henderson, a Liberal Senator for Victoria in the Australian Parliament (CB:11);

(10) Mr David Hodgett MP, the Liberal Member for Croydon in the Victorian Legislative Assembly (CB:12; CB:13);

(11) Ms Anna Hughes, a catering assistant who performs casual administrative work for Mrs Deeming (CB:14);

(12) Mr Joseph McCracken MLC, the Liberal Member for the Western Victoria Region in the Victorian Legislative Council (CB:15; CB:16);

(13) Mr Nyunggai Warren Mundine AO, a senior member of the Liberal Party (CB:17);

(14) Ms Susannah Oddi, a woman who attended the LWS rally (CB:18);

(15) Ms Helen Papadimitriou, a woman who attended the LWS rally (CB:19);

(16) Mr Richard Riordan MP, the Liberal Member for Polwarth in the Victorian Legislative Assembly (CB:20; CB:21);

(17) Mr John Ruddick MLC, a Member of the New South Wales Legislative Council and a member of the Libertarian Party (formerly the Liberal Democratic Party) (CB:22);

(18) Mr Ryan Smith, the former Liberal Member for Warrandyte in the Victorian Legislative Assembly (CB:23; CB:24);

(19) Ms Dayna Thompson, an accountant who is a close friend of Mrs Deeming and is involved in the Liberal Party (CB:25);

(20) Ms Naomi Walton, a paramedic who attended the same church as Mrs Deeming (CB:26);

(21) Mr Kim Wells MP, the Liberal Member for Rowville in the Victorian Legislative Assembly (CB:27; CB:28); and

(22) Ms Rachael Wong, the Chief Executive Officer of Women's Forum Australia (**WFA**) (CB:29).

18 Mrs Deeming, Mr Campey, Mr Duke, Ms Heath, Mr Hodgett, Mr McCracken, Mr Riordan, Mr Smith, Ms Walton, Mr Wells and Ms Wong were cross-examined.

19 Mr Pesutto read and relied upon two affidavits affirmed by him on 27 May and 22 July 2024 respectively (CB:30; CB:31). He also relied on the evidence of:

(1) Dr Matt Bach, the former Liberal Member for the North-Eastern Metropolitan Region in the Victorian Legislative Council and Deputy Leader of the Liberal Party in the Legislative Council from December 2022 until August 2023 (CB:32; CB:33);

(2) Ms Georgie Crozier MLC, the Liberal Member for the Southern Metropolitan Region in the Victorian Legislative Council and Leader of the Liberal Party in the Legislative Council since December 2022 (CB:34; CB:35);

(3) Mr Nick Johnston, Director of Communications to Mr Pesutto from 13 March 2023 to 3 March 2024 (CB:36);

(4) Mr Rodrigo Pintos-Lopez, chief of staff to Mr Pesutto from 13 March 2023 to 3 March 2024 (CB:37; CB:38);

(5) Mr David Southwick MP, Liberal Member for Caulfield in the Victorian Legislative Assembly and Deputy Leader of the Opposition since December 2022 (CB:39; CB:40);

(6) Ms Louise Staley, former Liberal Member for Ripon in the Victorian Legislative Assembly and chief of staff to Mr Pesutto since 3 March 2024 (CB:41);

(7) Mr Alex Woff, Director of Media to Mr Pesutto from 1 March 2023 to 4 March 2024, and Director of Communications to Mr Pesutto since 4 March 2024 (CB:42).

20 Each of them was cross-examined.

THE FACTS

21 Because of the large volume of material that was adduced into evidence, I asked the parties during closing submissions to agree upon a document that set out an **Agreed Factual Narrative**. This was emailed to chambers after the completion of the trial, but has not yet been electronically filed, and I have used it to assist me, partly, to chart a course through the mountain of evidence.

Mrs Deeming

22 Mrs Deeming was born in 1983 in Timboon, Victoria.

23 She attended a Catholic High School in Beaconsfield, and obtained her Victorian Certificate of Education in 2001.

24 She was awarded a scholarship to study at La Trobe University, and studied there from 2002 to 2005, obtaining a Bachelor of International Relations in 2005.

25 She met her husband in 2003, and they married in October 2005.

26 That same year, or thereabouts, they joined the Liberal Party.

27 In 2006, Mrs Deeming obtained a Post-Graduate Diploma of Education from the University of Melbourne, and from 2006 onwards, she worked at various private and secondary schools, teaching English, Literature, Legal Studies, Philosophy, Science and Psychology. She has four children.

28 In February 2008, upon the birth of their first child, Mr and Mrs Deeming let their membership of the Liberal Party lapse, for want of time.

29 Inspired by a talk which they attended by Mr John Anderson AC, they rejoined the Liberal Party in early 2014. That same year, Mrs Deeming was asked to run for the Liberal Party in the upcoming Victorian state election.

30 She was preselected for the seat of St Albans and ran, unsuccessfully. She achieved 32.5% of the two party preferred vote.

31 In 2018, Mrs Deeming was encouraged by a number of Liberal Party members to run for the number two "spot" for the Western Metropolitan Region in that year's election. She was not successful, but instead accepted the unwinnable third spot. She campaigned for the Liberal Party in all 11 seats in that region.

32 In 2020, Mrs Deeming won election as a councillor in the City of Melton, where she served until 2022. She gave evidence that she used her position to seek to foster Liberal Party values in the political sphere, as a known Liberal Party member, and "networked with many people and organisations across the political spectrum, including to attempt to build a working political consensus around the protection and reinstatement of sex-based rights".

33 In March 2022, Mrs Deeming unsuccessfully sought endorsement as the Liberal Party candidate for the Federal Electoral Division of Gorton.

34 She was pre-selected, but not endorsed, because, according to evidence given by Ms Crozier, the then Prime Minister, Mr Scott Morrison, thought her views on some social issues were considered too extreme and politically risky.

35 On 23 July 2022, Mrs Deeming was selected by delegates at a Preselection Convention as the Liberal candidate for the Western Metropolitan Region for the November 2022 Victorian state election.

36 Later that month, the Liberal Party of Australia's Administrative Committee (Victorian Division) met, including to determine whether to endorse the delegates' selection of Mrs Deeming.

37 Mrs Deeming was endorsed, but not unanimously. Ms Staley, who at the time was the Member for Ripon, and Mr Michael Kroger, the Immediate Past President of the Division, voted not to endorse her.

38 Mrs Deeming was elected at the 2022 election.

Mr Pesutto

39 Mr Pesutto has practised as a lawyer at various points from 1994. In 1996, he took a year off to become a political staffer, and returned to practice in 1997 until 2011, when he joined the staff of Mr Edward Baillieu AO, the then Premier of Victoria.

40 Mr Pesutto was elected as the Liberal Member for the seat of Hawthorn in the 2014 Victorian state election. Between December 2014 and December 2018, he was the Shadow Attorney-General.

41 Mr Pesutto deposed that while he was Shadow Attorney-General, he was generally aware of Mrs Deeming as becoming active in the Victorian Liberal Party, but that they did not have a lot to do with each other at that time.

42 Mr Pesutto lost his seat in the 2018 election, after which he became a Senior Fellow at the School of Government at the University of Melbourne, and returned to legal practice.

43 In November 2021, he was endorsed as the Liberal candidate for Hawthorn for the 2022 election. He regained his seat at that election.

Events in 2022

Mrs Deeming and Mr Pesutto meet in December

44 In early December 2022, Mrs Deeming and Mr Pesutto had a conversation over coffee at the Watergardens Hotel in Taylors Lakes. Mrs Deeming and Mr Pesutto have slightly different recollections of what they said to each other about issues relating to sex-based rights and safeguards for women and children, and how Mrs Deeming should advocate for such rights without being a "one issue" parliamentarian, but the nuances of those differences are of no moment. Mrs Deeming said her recollection was that Mr Pesutto was trying to gain her support and win her vote to be Leader of the Party, something which Mr Pesutto accepted in cross-examination.

45 Following that meeting, on 6 December 2022 Mrs Deeming sent Mr Pesutto a video of an excerpt from a Senate inquiry interaction between her and Greens Senator Janet Rice. Mr Pesutto responded saying "Very calmly done Moira. Thanks too for your time and consideration yesterday. I know it's a tough decision and I appreciated the opportunity. Cheers, JP". The "tough decision" was no doubt a reference to the leadership issue.

Mr Pesutto elected as Leader of the Victorian Liberal Party

46 On 8 December 2022, there was a party room meeting to vote for the leadership of the Victorian Parliamentary Liberal Party, and Mr Pesutto was elected.

47 After the meeting, Mrs Deeming texted Mr Pesutto, saying, "Congratulations on the win! I'm looking forward to working with you :)". Mr Pesutto responded, "Likewise Moira. You'll be great in Parliament. I'll touch base to organise a time when we can catch up as we discussed over coffee. I hope you enjoyed today. Cheers, JP".

Mrs Deeming elected as Whip

48 After he was elected Leader, Mr Pesutto suggested that Mrs Deeming apply for the position of Liberal Party Whip in the Legislative Council (CB:2, 62[16]). Under the party's constitution, the role of Whip is filled by election, by a vote of members of the party who are Members of the Legislative Council.

49 Mr Pesutto testified that he supported her candidacy and that in doing so he was, as he agreed in cross-examination, expressing to the Parliamentary Party that he was "happy to be associated with Mrs Deeming" (Transcript (**T**) 650.4–8).

50 At a meeting in late December 2022, either Mr Pesutto or Ms Crozier (it is unclear who) nominated Mrs Deeming for the position of Whip. She was unanimously elected.

Mrs Deeming learns of LWS rally

51 In late 2022, Mrs Deeming learned that Ms Keen and SFW would be embarking on an international "Let Women Speak" tour, and that a rally would be hosted in Melbourne on 18 March 2023 (CB:2, 69[40]). Mrs Deeming gave evidence that her "understanding at the time was that SFW was an organisation run by Ms Keen which advocates for the preservation and/or reinstatement of reasonable biological sex-based rights (such as female only bathrooms and changerooms) as well as against the irreversible and harmful medical transitioning practises used on gender non-conforming, autistic and gay minors"; that "the organisation and its goals were mainstream and global, and supported by high profile members of every mainstream political party in the world"; and that SFW coming to Australia "was an opportunity to shine light on these issues" about which she (Mrs Deeming) was passionate.

January – February 2023

52 At some stage after this, Mrs Deeming contacted Ms Keen to introduce herself, and to ask if there was anything she could do to help (CB:2, 70[42]). Ms Keen told her that she already had a Melbourne team organising the LWS rally, but she suggested that Mrs Deeming get in contact with Ms Angie Jones, one of the key organisers, to see if she could help her.

53 On 10 January 2023, Mrs Deeming messaged Ms Jones to see if she could "help out in the background in any way" (CB:2, 70[44(a)]).

54 In January 2023, Mrs Deeming attended a two-day Coalition Conference (CB:1, 8[39]).

55 Either at the conference, or around that time, Mrs Deeming had conversations with Mr Pesutto (CB:1, 8[40], CB:31, 364[3]). They have slightly different recollections of what was said.

56 Mrs Deeming said she again raised with Mr Pesutto her advocacy for sex-based rights. She told him she wanted to advocate for these issues, about which she felt strongly, but that she never wanted to do it in such a way as to cause trouble within the team. She asked if he would meet with her in the near future to give her advice as to how she should advocate for these issues without dividing the team. Mrs Deeming said that Mr Pesutto agreed, but never contacted her to set up a meeting.

57 She also swore that she told Mr Pesutto that she planned on attending Ms Keen's LWS rally in March 2023; that Mr Pesutto said that he did not know who Ms Keen was; that she encouraged him to look her up; and that it would be good if he met with her, and some of the other women, to hear their views.

58 At some stage after this, Mrs Deeming said she had another conversation with Mr Pesutto in which she again raised that she planned on attending the LWS rally and again invited him to meet Ms Keen, on 18 March 2023, privately before the LWS rally, so he could hear her views and perspectives (CB:1, 8[40]). Mrs Deeming said that Mr Pesutto agreed and asked her to book in the meeting with his office, which she said she did.

59 Mr Pesutto accepted in cross-examination that he had a conversation with Mrs Deeming in which she told him there were people coming to Melbourne and that she may have mentioned Ms Keen and asked whether he could meet with them (T651.14–21). He gave evidence that he did not agree to meet them but rather gave "a non-committal" response to the effect of "[j]ust talk to my office" (T651.23–26). In any event, Mr Pesutto did not meet with Ms Keen before the LWS rally.

60 Between 17 and 24 January 2023, Mrs Deeming and Ms Keen exchanged a series of messages relating to the organisation of the LWS rally in Melbourne.

61 On 4 February 2023, Mrs Deeming and Mr Pesutto attended a "Western Metropolitan Meet & Greet" event. Mr Mundine also attended.

62 During February 2023, Mrs Deeming booked the front steps of Parliament House to be used for the LWS rally (Ex R4); agreed to be registered as an additional police contact for the rally (Ex R2; Court Book Part C – Evidence (**CC**):125); arranged for the sound equipment (Ex R137; CC:148); and exchanged emails with a company to arrange security for Ms Keen (Ex R5).

63 On 18 February 2023, Mrs Deeming also provided Ms Keen with tables summarising the way in which different attributes were protected by anti-discrimination laws in the Commonwealth and each state and territory, and a table of laws regarding change of sex on birth certificates (T150.30–31; Ex R8).

64 Mrs Deeming delivered her maiden speech in Parliament on 21 February 2023 (CB:1, 6 [33]). Mr Pesutto attended. Despite it being referred to on many occasions during the trial, the content of her speech was not in evidence.

65 The parties have a different take on how the speech was received.

66 Mrs Deeming's husband gave unchallenged evidence that he attended the maiden speech and saw the gallery was full of her supporters, and that it was "as diverse a group of people as you could imagine – Christians, Muslims atheists, lesbians and gay men, and detransitioners", as well as members of the Liberal and Labor parties, and the Greens (CB:4, 118[37]).

67 Mrs Deeming pointed to what she submitted was "an overwhelming weight of evidence to show that [her maiden speech] was positively received", as follows:

(a) Ms Heath sent her supportive texts saying, "Seriously!!!! You!!!! Rock!!!!" (Ex A98; CC:156) and "You were outstanding yesterday!!! I'm still on a high. My family want the link when you get it" (Ex A107; CC:174);

(b) Ms Beverley McArthur MLC (Liberal Member for the Western Victoria Region in the Legislative Council) sent her a text message (Ex A99; CC:157) saying, "Wonderful speech. Congrats. It was fabulous";

(c) Dr Bach sent her a text message (Ex A59; CC:158) that said, "Amazing and powerful speech";

(d) Mr Chris Crewther MP (Liberal Member for Mornington in the Legislative Assembly) sent her a text message (Ex A100; CC:159) saying, "Well done on your maiden speech today. I was able to get to the last three-quarters of it. It was very strong, and said a lot of what many people are likely thinking, but are afraid to speak. Well done!";

(e) Mr Nick McGowan MLC (Liberal Member for the North-Eastern Metropolitan Region in the Legislative Council) sent her a text message (Ex A108; CC:175) saying, "superstar!";

(f) Mrs Deeming's staffer, Mr Paul Lassig, sent her an email on 23 February 2023 saying, "So many people have called into [sic] support you. Messages streaming in from everywhere" (Ex A110; CC:178);

(g) At a meeting held on 19 March 2023 (which I will address in detail below):

(i) Mr Southwick said, "95% of that speech was amazing. Brilliant. Amazing. Unbelievable. It was one of the best speeches. And then you wanted to frame it that way, you have chosen to frame it that way" (Ex A2, lines 781–783); and

(ii) Mr Pesutto described it as a "good speech" (Ex A2, line 784).

(h) In his affidavit, Mr Pesutto gave evidence he thought "it started as a great speech" but "then took a turn when towards the end Mrs Deeming made" what he described as "various controversial statements in relation to transgender people and sex-based rights" (CB:30, 332[29]).

(i) Ms Crozier gave evidence that she "personally thought [Mrs Deeming's] speech was fine and congratulated her on it" (CB:34, 412[20]).

(j) Mrs Deeming gave evidence that:

(i) she received many emails from members of the public which her staffers told her "were overwhelmingly positive" and had been sent "by people across the political spectrum" (CB:1, 6[34]) (some of these emails are in evidence at Ex A113; CC:184);

(ii) she received many messages, including on Facebook, which praised her speech and were otherwise supportive (CB:1, 6[35]) (some of these messages are in evidence at Ex A112; CC:183); and

(iii) her speech was posted online "and went viral" and that she received positive comments and feedback online where videos of the speech had been uploaded (CB:1, 6[36]) (for example, positive comments about Mrs Deeming's maiden speech in response to a YouTube video about it are Ex A114; CC:188);

(k) Mrs Deeming posted a Facebook post about her speech on 22 February 2023 (Ex A101; CC:166) which received hundreds of positive responses (which are Ex A102; CC:167);

(l) Mrs Deeming published a tweet about her speech on 22 February 2023 (Ex A103; CC:168) which received at least 87 positive responses (which are Ex A104; CC:169);

(m) Ms Wong gave evidence that she posted a tweet with an excerpt of a recording of Mrs Deeming's speech, which received 2600 "likes", was "reposted" 750 times, and received 77 "comments" which were "overwhelmingly supportive" of Mrs Deeming (CB:29, 318–319[9]–[12]). (A copy of a selection of those comments is at CC:171);

(n) WFA also posted a Facebook post about Mrs Deeming's speech (Ex A105; CC:172), which received approximately 1300 comments which were positive towards Mrs Deeming (Ex A106; CC:173).

68 Mr Pesutto, on the other hand, sought to emphasise at trial what he described as the "widespread negative media coverage" of the maiden speech in *The Age* newspaper and other mainstream publications. He cited and produced two articles that he said he saw at the time ("New Liberal MP uses first speech to slam equality 'taken to extremes'" (*The Age*, 21 February 2023) (Ex R140); and "Premier hits back at new MP's transgender comment" (*news.com.au*, 22 February 2023) (Ex R141)).

69 On 22 February 2023, Mrs Deeming and Mr Pesutto exchanged a number of text messages about arranging to meet that day. They arranged to meet at 7.15pm. Shortly before their scheduled meeting, Mr Pesutto was informed that Mrs Deeming was out at dinner with other MPs and sent her a message at 7.14pm, which said, "I'm in my office Moira. Did you still want to meet?" Mrs Deeming responded at 7.23pm, "It's ok I'm sorry" (Ex R546; Ex A109).

70 On 23 February 2023, documents from Mrs Deeming's Melton City Council email account were obtained and publicly released pursuant to a freedom of information (**FOI**) request made by Sex Work Law Reform Victoria.

71 That same day, Mrs Deeming met with Ms Crozier and Mr Pesutto, following publication in the *Herald Sun* newspaper of an article critical of her, apparently based on the content of some of those emails.

72 Mrs Deeming secretly recorded the meeting.

73 The audio recording is Ex R73. The agreed transcript of it is Ex R72.

74 These are the relevant parts of what was said (errors in the original):

> JP [Mr Pesutto]: The media wanna tear us up big time over the stories in the Herald Sun today and the stuff in the media recently. Um we've got Danny Pearson on the ropes but that's now been washed away. Um I suppose I wanted to have an initial conversation to see how we're going to deal with these serious issues because I know that there are deeply held views and I've said to you and said to others that I'd never ask anybody to change their views but this is what we're gonna get hit with every time we go out. I can't send anybody out now without issues around you coming up. Just went out there yesterday to smash Pearson um and the press conference immediately or very soon turned to you. I've gotta go out today and I've gotta face a press pack where I would have liked to have been talking about Danny Pearson resigning. I'm gonna have to put that off. Um so, I know we all come in here with views and I would never ask anyone to change their views and I mean that but we're gonna have to work out how we do this in a way which allows the party to reach out broadly across the cross section of the community and win elections. We just can't do it. We we will just get smashed and I can't see if if we don't have a way of working through these issues I just don't see how we're gonna do it in a way where we can win seats across the board and form government. Um so I wanted to have an initial chat because I think what I'm gonna get attacked with today is that um we hate and I know you'll have something to say on this but the the line they're going to run is that we support harmful speech, we hate same sex transgender people, we hate transgender people, we you know we're um we're fiercely opposed to um anyone in that community. Now I know you have views on that but we're gonna, we're gonna need to come up with something because um I'm gonna get torn apart and and not just me everyone is. No shadow will be able to go out there and face the media on issues that we actually want to talk about until we find a way just to say okay people are entitled to their views um---
>
> MD [Mrs Deeming]: I would very much like it if none of you would let it stand when they say what do you think about Moira's anti-trans views. I don't have anti-trans views I don't have homophobic views. No one has ever been able to come up with any evidence that I do and yet I'm labelled with those words.
>
> JP: Yeah they're certainly picking apart, I mean I I haven't had a chance to go through all the emails um---
>
> MD: Which emails?
>
> JP: Uh the emails that are referred to in the Herald Sun um---
>
> …
>
> So I think, I think we need to put something out like that to calm it down because um they're, they're in a---
>
> GC [Ms Crozier]: frenzy
>
> JP: ---the media pack. Um it's almost like I, I wish I could cancel question time 'cause they're not gonna be the slightest bit interested in what we asked about this and so um I think that---
>
> MD: We have a good argument and it's better than Moira has those views. I don't have homophobic or transphobic views.
>
> JP: Okay. We---
>
> MD: There is no evidence that I have those views. All they have got is me asking questions about what does the law mean and me saying can we not find a different way to balance the laws so that we can look after transgender people as well as protect single sex rights. That is all I've ever done and also I have questioned the, the automatic affirmation processes. They've been, they have been questioned all around the world. There's gonna be an inquiry coming whether anyone likes it or not. Now in terms of whatever you wanna say on those issues agree or not I would never let it stand. I would never let it stand. If they say what do you think about her transphobic views and you say oh well she has views that are different to mine that will enrage me at no end. I don't have transphobic views and you should defend me. I've never said anything transphobic or hateful I've never said anything homophobic. My biggest fans are gay people and trans people. They were in my audience.
>
> …
>
> MD: You, but even for you even not defending me it's like you're admitting there's someone in our party with transphobic views and we can't get rid of them because of free speech.
>
> JP: But Moira you know how this debate is it's feverish. People take signals. So right now unless I go out there and assure people they are gonna think things and I, I---
>
> MD: What would your vision of ins-, like reassuring people be?
>
> JP: That no matter who you are because they don't think that about you. No matter what you say they don't think that about you.
>
> …
>
> MD: I think they're gonna do it because they smell blood in the water because no one's coming up with a strong response. If we just bit back and said actually, not a single homophobic or transphobic thing was said. You name the one thing that was said. They've got nothing. I said nothing bad.
>
> GC: In their eyes though it is being that, in their eyes as John said it is, it is one dimensional. They're not, they're not taking on board. I mean I haven't read the 100 emails but I'm getting emails.
>
> MD: I'm getting emails of support.
>
> GC: Well that's alright I'm not. I'm getting the others where the 100 emails to Council [?]---
>
> MD: Yeah because they want you all to fold and act like it's homophobic and transphobic just to care about single sex spaces which is absurd and internally incoherent. They are, the trans and the gays they're opposed. They're telling lesbians that they have to date biological men it's rape culture. You can easily win this argument you can easily turn it back against them. It's up to you whether you're going to.
>
> JP: Yeah. I, I don't accept that. I think you've gotta live in in the real world Moira and we, I, I just don't think you see what a train yeah coming our way. We will not be able to define ourselves as anything other than a party focused on these issues and I, I've, I've never said that I wanted anyone to change their views but I've gotta tell you that's all we're gonna get defined as.
>
> …
>
> GC: Well that's your view and I had a view and I have a strong view about medical intervention on children and I made that very clear in my debate. However, we're at this point where we've got a very big issue for our party as John has said and that's what we need to work through now.
>
> MD: I don't know what you're asking of me and what you're telling me that you're going to do.
>
> JP: Well I've still gotta formulate my language because it's gonna be one mean press conference. They are going to try to tear me to shreds um and they're gonna use it as my test on whether the party's a broad based party and this and that. It doesn't matter what we might finesse in here they are going to try and tear not just me the party.
>
> GC: Oh all of us.
>
> JP: In a week where we had pear-, we'll, we'll see what happens. The government is all putting all guns blazing into making that press conference. Andrews has come out calling on me today.
>
> MD: I can get you not today but you know like I can get you a row of lesbians to stand around you and back you up in a press conference. I can get you a bunch of parents like I'm just saying.
>
> JP: Yeah. So Moira what I'm going to do is I'm just gonna do a bit more planning um and I might need you just to come and have a chat so I can go over what I'm gonna say or propose to say um but we've just gotta be in communication this afternoon. Um these things aren't as simple as just putting someone out here or someone had to stand with it. It, it's as you well know you've been around politics now a while uh it doesn't quite work like that. Um they've got a narrative they're trying to validate and they're going to try---
>
> …
>
> JP: Well um this was the first chat and I think we're gonna need another one uh before I go out. Um and I just wanted to get your sense of things. And [?]---
>
> MD: My sense of things is you are not as vulnerable as you feel that you are. You think they're gonna find something. There's nothing.
>
> JP: It's not just that. This is, this is narrative shaping stuff [?].
>
> …
>
> JP: ---[?]. And I was gonna call on a minister today to resign in less than an hour about an hour I was gonna call on a minister to resign which I wouldn't and don't ever plan to do lightly. And I'm, well that's actually [?] 'cause the press pack just don't wanna talk about it they're not interested, they're interested in us. Um and you know what I, what I just wanna do is try and shift us as a team onto the issues that are gonna win us the seats where we need to win and then we can you know implement an agenda that we can be proud of but if I'm going out there every day talking about these things I can tell you all ministers shadow ministers or any of us we're gonna find that really hard. And you know Labor has 56 seats so we've got a big job to state the obvious.

75 Later that day, Mr Pesutto held a press conference. A transcript of it is Ex A111; CC:180. The stated purpose of the press conference was for Mr Pesutto to make statements and take questions about an issue relating to Mr Danny Pearson MP (a Minister in the Labor Andrews government), which he did. A considerable part of the press conference was, however, taken up with questions from journalists about Mrs Deeming's "views". It concluded as follows:

> JOURNALIST: Can I just clarify, do you condemn Moira Deeming's views?
>
> [MR] PESUTTO: I don't agree with those views.
>
> Everybody knows I'm a very inclusive leader. I believe in a Victoria where all Victorians have an opportunity to reach their full potential no matter what their background.
>
> I'll let Moira speak to her views but my position on these issues is clear and has been for a long time. Everybody knows me and that I'm a modern progressive liberal who believes in these values and I'll make sure that under my leadership we will be a strong voice for all Victorians no matter what their background.

8 to 17 March 2023

76 Mrs Deeming gave a speech in Parliament on 8 March for International Women's Day, in which she said she would be attending the LWS rally and invited the Minister for Women, Ms Natalie Hutchins MP, to attend (CB:1, 7[37]). The speech explained in a summary way Mrs Deeming's views about "sex-based rights":

> My adjournment matter is also for the Minister for Women. First of all, I would like to note that on this International Women's Day it is my honour to be a part of the first ever Legislative Council to have a majority of female MPs. In many ways we women of the upper house are treading a path opened up for us by Dame Enid Lyons, who was the first woman elected to the House of Representatives and who was also a proud member of the Liberal Party.
>
> However, I must also note with sadness the scandalous fact that women's rights have actually gone backwards in this state. Many of the hard-won rights that women have fought for so that we could fully and equally participate in public life over the course of the last 100 years are lost. We no longer have the right to female-only public toilets, change rooms and refuges, and all those so-called affirmative action measures like gender quotas, scholarships and grants that were supposed to be just for women are lost now too. Female-only sports leagues, which gave so many young women, me included, access to fair and fun sporting competition are now also lost. Females have lost the right - the basic right - to associate exclusively with each other. We are not allowed to have female-only gyms, and even lesbians are not allowed to have female-only dating apps. Violent male sexual offenders are housed with vulnerable female prisoners. In fact there is a vulnerable group of women in my area, in the Dame Phyllis Frost correctional centre, who have reached out to me, to the government and to the media, crying out for help because they are scared and they are vulnerable and they look around the world and they see what has happened to other women in prisons where violent male rapists have been housed.
>
> Why has this situation happened? It is because the government cannot seem to crack the code of what the word 'woman' actually means. Thankfully, I have the formula: 'woman' is a noun and it refers to an adult human female. We are also losing the right to even speak up and disagree about this. We are labelled vile. We are labelled bigots. But it is not hateful to ask for sex-based rights. They are, after all, originally a category of human rights. Will the Minister for Women Natalie Hutchins let women speak to her and join us on the steps of Parliament on 18 March for the listening post and actually hear what women have to say on this issue?

77 Following Mrs Deeming's speech, there was an exchange between Dr Bach and Mrs Deeming as they were leaving the Legislative Assembly Chamber.

78 Incredibly, the parties included in the Agreed Factual Narrative their disagreement about the contents of this exchange.

79 Dr Bach said in his affidavit that, following Mrs Deeming's speech, she approached him and said, "Sorry. That was the last time" (CB:32, 392[9]). He gave evidence that he "understood" her comments "to be an apology for stepping out of line with her speech in a way that was contrary to the interests and stated position of the Party".

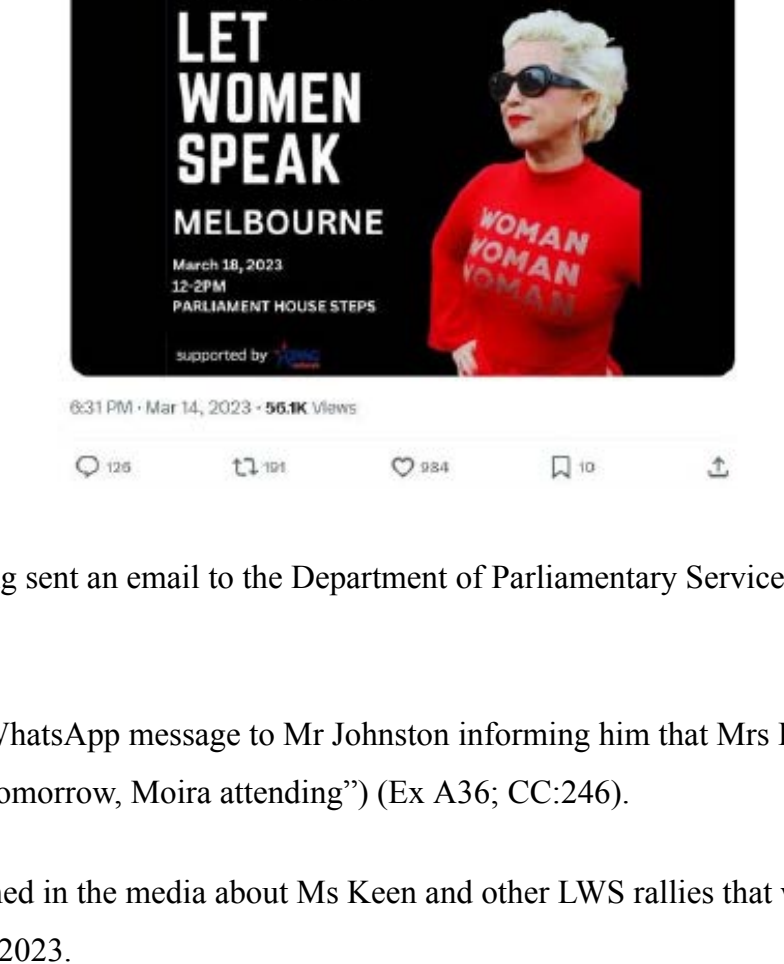
80 Mrs Deeming said she said to Dr Bach words to the effect of, "Don't worry; that's the last one for the year" (CB:2, 68[36]) and that she meant "the last women's rights event for the year".

81 Quite how it could be imagined that their differing views about the meaning of some passing remark made by Mrs Deeming to Dr Bach could have any bearing on any serious and substantial issue in this proceeding escapes me.

82 On 11 March, Dr Bach gave an interview to Joy FM. The recording of this interview is Ex R548 and a transcript of the recording is Ex R549.

83 During the interview, Dr Bach was asked about Mrs Deeming's comments that something called "the Safe Schools program" had been devised by "paedophilia apologists". Dr Bach said in cross-examination that "paedophile" is a toxic, dreadful, homophobic and common trope used to describe members of the LGBT community and transgender people (T909.44–45, T919.43–44, T925.46–47, T926.14–15, T928.18).

84 The same day, Mrs Deeming published the following tweet (Ex R16; CC:215):



Moira Deeming MP
@MoiraDeemingMP

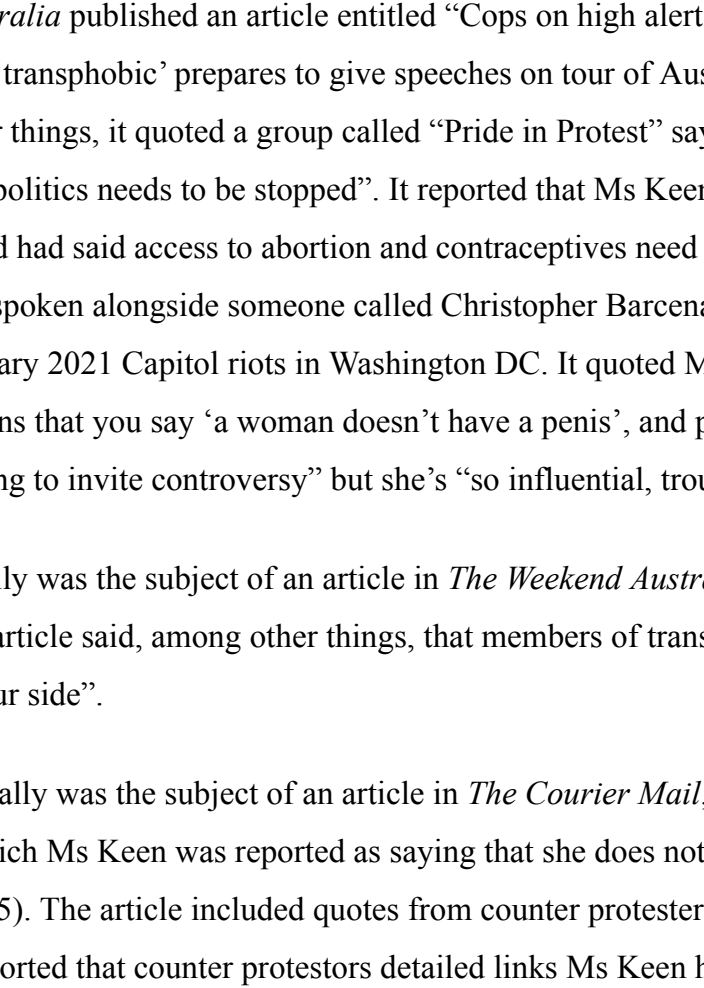
This week in Parliament, I invited @NatalieHutchinsMP, Victoria's Minister For Women, to attend the 'Let Women Speak' listening post on the steps of Parliament on March. #LetWomenSpeakAustralia @ThePosieParker

2:08

3:31 PM · Mar 11, 2023 · 81.6K Views

255 Reposts 35 Quotes 1,008 Likes 38 Bookmarks

85 On 14 March, Mrs Deeming published the following tweet (Ex R15; CC:243):



Moira Deeming MP
@MoiraDeemingMP

I'll be there. Who will join me to listen to women? @NatHutchins

Self ID is a danger to women and children, it allows males in all women's spaces. If you want women and girls to have female only spaces come and have your say. We must protect female only crisis centres, changing rooms, sports, prisons and groups. Come and have your say.
WWW.STANDING FOR WOMEN.COM & KELLIE-JAY KEEN PRESENT
LET WOMEN SPEAK
MELBOURNE
March 18, 2023
12-2PM
PARLIAMENT HOUSE STEPS
supported by
WOMAN WOMAN WOMAN

6:31 PM · Mar 14, 2023 · 56.1K Views

126 191 984 10

86 Also on 14 March, Mrs Deeming sent an email to the Department of Parliamentary Services regarding security at the LWS rally (Ex R13; CC:242).

87 On 15 March, Mr Woff sent a WhatsApp message to Mr Johnston informing him that Mrs Deeming was attending the LWS rally ("Anti-trans rally on the front steps tomorrow, Moira attending") (Ex A36; CC:246).

88 A series of articles were published in the media about Ms Keen and other LWS rallies that were conducted in Sydney, Brisbane and Perth between 10 and 14 March 2023.

89 On 10 March, the *Daily Mail Australia* published an article entitled "Cops on high alert as controversial UK women's rights campaigner who has been slammed as 'transphobic' prepares to give speeches on tour of Australia" regarding Ms Keen's upcoming rally in Sydney (Ex R12). Among other things, it quoted a group called "Pride in Protest" saying that it would be protesting Ms Keen's "vile bigotry" and that "[t]his far right politics needs to be stopped". It reported that Ms Keen allegedly posed with a campaigner who celebrated Winnie Mandela's death, and had said access to abortion and contraceptives need to be rolled back for children and teenagers. It also reported that she has spoken alongside someone called Christopher Barcenas, who was said to be a member of the "Proud Boys" and present at the 6 January 2021 Capitol riots in Washington DC. It quoted Ms Keen purportedly saying, "In today's money, because being transphobic means that you say 'a woman doesn't have a penis', and probably I am transphobic". Ms Keen is also reported as saying she "does nothing to invite controversy" but she's "so influential, trouble follows her."

90 On 11 March, the Sydney LWS rally was the subject of an article in *The Weekend Australian*, entitled "Protesters clash at anti-trans rally in Sydney" (Ex R329). The article said, among other things, that members of trans advocacy groups chanted, "Posie Paker you can't hide, you've got Nazis on your side".

91 On 13 March, the Brisbane LWS rally was the subject of an article in *The Courier Mail*, called "Controversial UK activist Kellie-Jay Keen leads Brisbane protest" in which Ms Keen was reported as saying that she does not "think trans is a thing", and described it as a "dirty fetish" and a "cult" (Ex R175). The article included quotes from counter protesters who said the far right "turn out in droves to support" Ms Keen. It also reported that counter protestors detailed links Ms Keen had with "Proudboy activists, Hungarian politician and Holocaust denier Hans Lysglimt Johansen, Canadian white-supremacist Jean-François Gariépy and American talk show host Tucker Carlson."

92 On 14 March, the Perth rally was the subject of an article in *The West Australian*, called "LGBTQI in Perth protest over visiting anti-trans activist Kellie-Jay Keen" (Ex R330). It was reported that LGBTQI protesters shouted, "Posie Parker you can't hide, you have nazis on your side". The article went on to say, "It is unclear whether the reference to nazis by protesters referred to Ms Keen's appearance in videos with white nationalists or an event she organised in January, at which one of the speakers quoted Adolf Hitler…"

93 Mrs Deeming spent a little time on Twitter (now known as X) reading and responding to tweets the night before the LWS rally. Mr Pesutto refers to these tweets at RCS Schedule A [11.15]–[11.23] and RCS Schedule C [5]–[16], and says they show that Mrs Deeming knew about alleged links between Ms Keen and the "far right" before the rally. For example, one Twitter user posted, "Why are [you] ignoring her [Ms Keen] associating with far right groups [Proud Boys] that were involved in the January 6th Capitol riot?" to which Mrs Deeming replied, "You can hold me to account for the policies I advocate for, not for any other views held by other people, on the basis that I "associated" with them. That's ridiculous …" (RCS Schedule A [11.21]).

18 March 2023

The LWS rally

94 On 18 March, Mrs Deeming attended the LWS rally in Melbourne, which was held on the steps of Parliament House.

95 A detailed narrative and pictorial chronology of the LWS rally, as agreed between the parties, which runs to 58 pages, is set out in a document entitled "Agreed Chronology of the Let Women Speak Rally", emailed to chambers (with leave) after the completion of the trial (but not yet electronically filed).

96 The sources for that chronology were:

(a) the unchallenged evidence of Mr Fernando, a videographer and independent journalist who filmed the LWS rally, in his affidavit dated 27 May 2024 (at CB:7), and its exhibit "RF-1" (**RF-1**);

(b) the first audio-visual recording of the LWS rally filmed by Mr Fernando using a high-definition single-lens camera which was mounted to a handheld camera mount (the **Fernando HD footage**) (Ex R180);

(c) the second audio-visual recording of the LWS rally filmed by Mr Fernando using an iPhone which was directly streamed via Facebook Live to his Facebook page (the **Fernando stream**) at page 1 of RF-1 and at CC:254;

(d) the audio-visual recording taken by Ms Keen which was livestreamed on and then subsequently uploaded to her YouTube page (the **Keen footage**) (Ex A137); and

(e) the audio-visual recording entitled "Let Women Speak Melbourne 2023 Highlights" published on YouTube by "The Unshackled" (the **Unshackled footage**) (Ex R522).

97 I set out below a summary of the key events of the LWS rally, which is drawn from the agreed chronology.

98 At approximately 11.42am, Mr Fernando approached the north end of Spring Street where a police line had formed (the **north police line**) (CB:7, 147[11]). He observed that a group of a dozen men dressed in black approached the north police line (CB:7, 147[11]). They were carrying an Australian flag and a rolled-up banner.

99 Mr Fernando gave evidence that around this time he observed that "a large group of counter protesters had formed on Bourke Street" (the **Bourke Street protesters**) (CB:7, 147[15]).

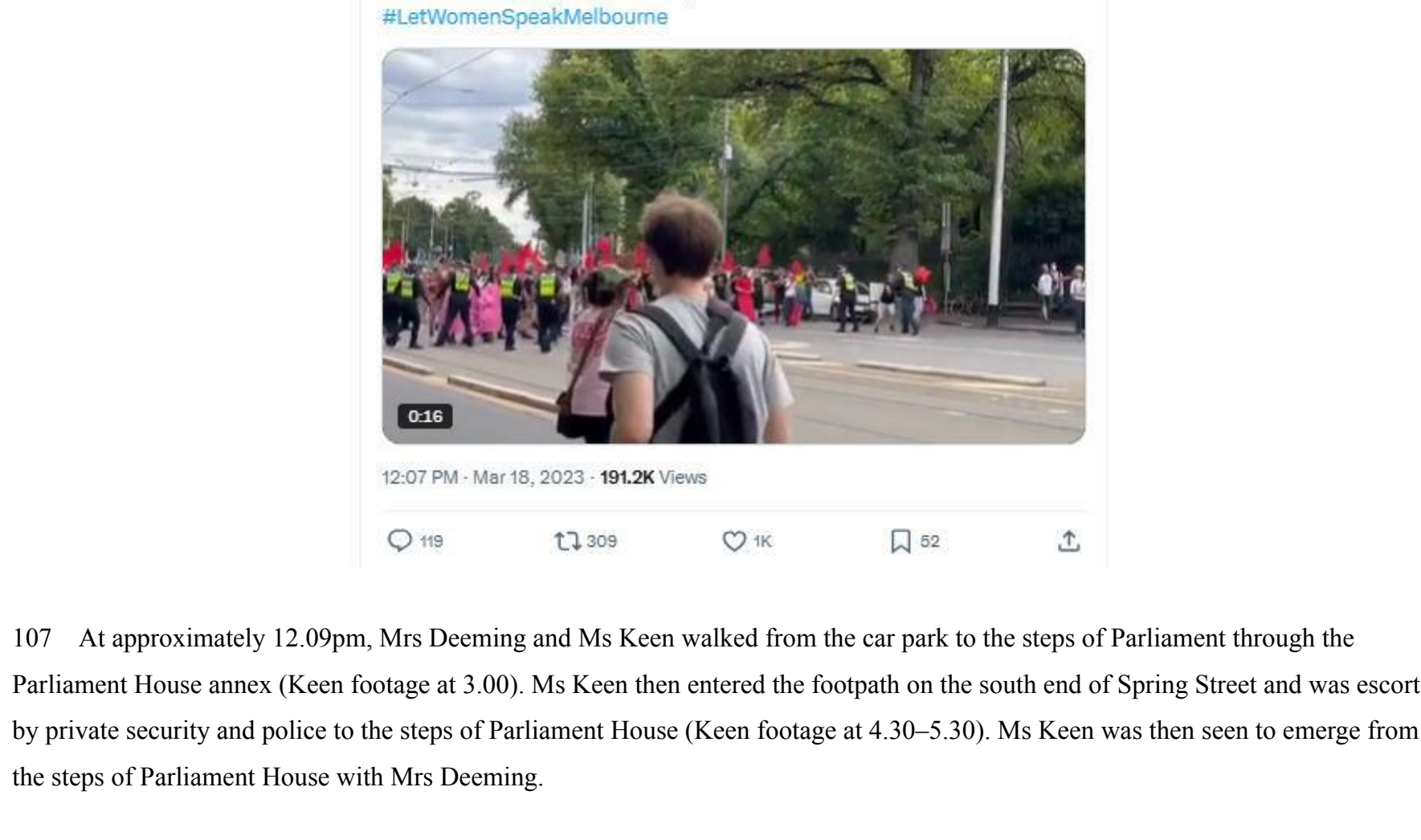
100 At around 11.43am, the men in black (who were referred to in the agreed chronology as the **Nazis**) stood in a line opposite the north police line and unfurled a banner which read "Destroy Paedo Freaks" (the **banner**), which was displayed towards the south end of Spring Street. The crowd could be heard chanting, "Fuck off Nazis, fuck off" (CB:7, 147 [13]; Fernando HD footage at 2.45–3.00).

101 At approximately 11.55am, Mr Fernando heard "police sirens and loud drumming coming from the north end of Spring Street" (CB:7, 148[19]). A large number of protesters carrying red flags (described by the parties as the **Socialist Alternative protesters**) emerged from the far north end of Spring Street (CB:7, 148[21]). The police formed a further line (the **far north police line**) preventing the Socialist Alternative protesters from entering the Parliamentary precinct (Fernando HD footage at 14.00–14.12).

102 At around that time, the Nazis faced the north, displayed the banner, and performed the Nazi salute in the direction of the Socialist Alternative protesters (CB:7, 148[23]; Fernando HD Footage at 14.15).

103 Between approximately 11.57am and 12.04pm, the Socialist Alternative protesters started chanting, among other things, "Posie Parker you can't hide; you've got Nazis on your side" and "fuck off, Nazis, fuck off" (Fernando HD footage at 15.56–17.30, 20.20–21.01, 21.55–22.55).

104 At 12.03pm, Ms Jones (using the handle @angijones) made the following post on Twitter (CC:742):



Angie Jones
@angijones

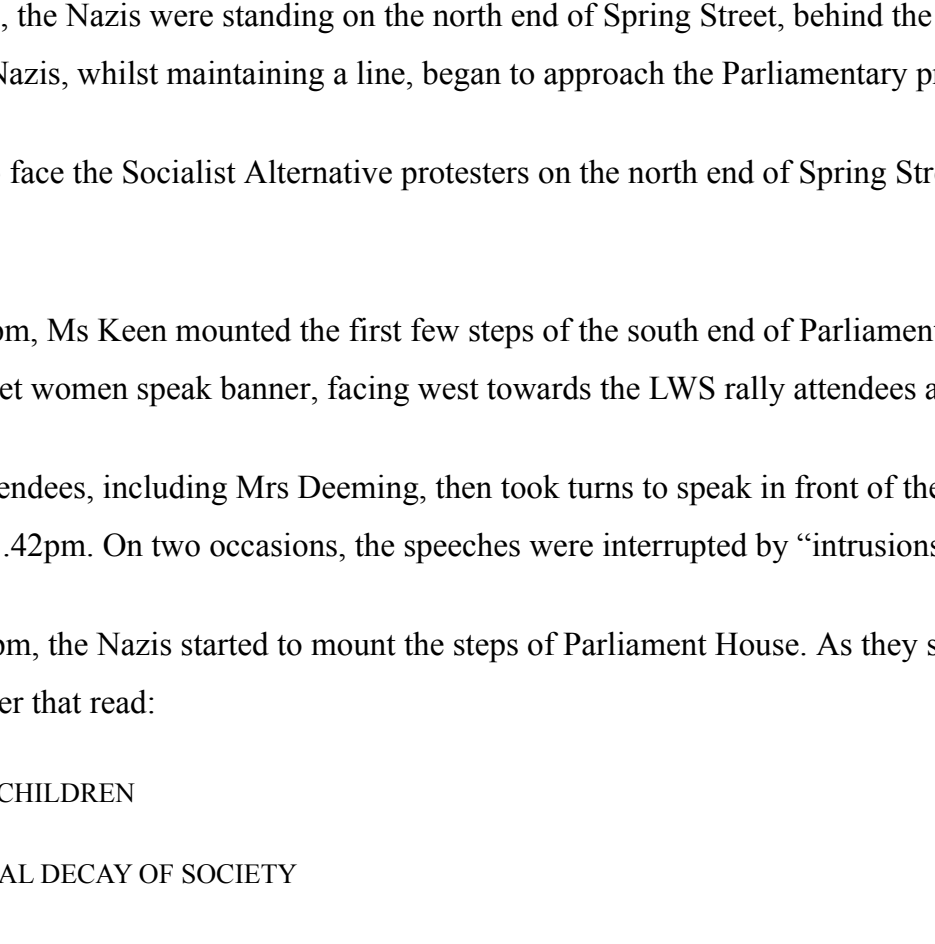
Smaller crowd of trans rights activist than expected. Usual students & fake socialists. Fash are here too 🤬 because the 'antifascists' invited them.

12:03 PM · Mar 18, 2023 · 42.1K Views

81 64 463 3

105 At approximately 12.06pm, Ms Keen commenced livestreaming the Keen footage (Ex A137).

106 At 12.07pm, the official page of Let Women Speak (using the handle @StandingforXX) posted the following on Twitter (CC:743):



Let Women Speak Official
@StandingforXX

Let's see who they harass more, women or nazis.
#LetWomenSpeakMelbourne

0:16

12:07 PM · Mar 18, 2023 · 191.2K Views

119 309 1K 52

107 At approximately 12.09pm, Mrs Deeming and Ms Keen walked from the car park to the steps of Parliament through the Parliament House annex (Keen footage at 3.00). Ms Keen then entered the footpath on the south end of Spring Street and was escorted by private security and police to the steps of Parliament House (Keen footage at 4.30–5.30). Ms Keen was then seen to emerge from the steps of Parliament House with Mrs Deeming.

108 At approximately 12.15pm, Ms Keen commenced setting up cameras and microphones in front of a large banner that read "#let women speak" (Fernando HD footage at 34.40).

109 At around the same time, the Nazis were standing on the north end of Spring Street, behind the far north police line, displaying the banner, facing south. The Nazis, whilst maintaining a line, began to approach the Parliamentary precinct.

110 The Nazis then turned to face the Socialist Alternative protesters on the north end of Spring Street and displayed the banner in their direction.

111 At approximately 12.18pm, Ms Keen mounted the first few steps of the south end of Parliament House and began speaking into a microphone in front of the #let women speak banner, facing west towards the LWS rally attendees and the Bourke Street protestors.

112 Seventeen LWS rally attendees, including Mrs Deeming, then took turns to speak in front of the #let women speak banner, from approximately 12.24pm until 1.42pm. On two occasions, the speeches were interrupted by "intrusions" from counter protestors.

113 At approximately 12.33pm, the Nazis started to mount the steps of Parliament House. As they stood on the steps, two people in front of them displayed a banner that read:

> PROTECT OUR CHILDREN
>
> STOP THE MORAL DECAY OF SOCIETY
>
> SILENCE IS NO LONGER AN OPTION

114 At approximately 12.36pm, Mr Thomas Sewell (who, as was accepted by both parties, was the leader of the Nazi protestors) was standing on the footpath at the base of the steps of Parliament House on the north end of Spring Street, whilst the other Nazis were standing on the fifth or sixth row of the steps of Parliament House. Mr Sewell could be heard to be speaking through a megaphone. He said:

> We are here to destroy the fools that are destroying our children. We are not here to conserve. We are revolutionaries. What that means is that, it is not good enough for the politicians to allow this to happen. It is not good enough for the schools to teach sodomy and globalism to our children. The reason why we are here is because it is not good enough what's currently going on under our political solution. It is our belief, that a revolution is coming.
>
> It is our belief that these communists, paedophiles and trannies have infiltrated every single institution of this country across the West. They are not just coming for your children, they are coming for everyone. They cannot breed. They have castrated themselves, chemically, psychologically and spiritually. We wish for the survival and preservation of our people. We are not here to have a conversation with these people. We are not here to make a compromise with these communists. We are not here to be nice and friendly. We are revolutionaries and we are here to destroy the sick and rotted society that has left us all out to dry.

115 Mr Sewell then engaged in a "call and response" with the Nazis behind him, who chanted while repeatedly performing the Nazi

115 Mr Sewell then engaged in a "call and response" with the Nazis behind him, who chanted while repeatedly performing the Nazi salute.

116 During Mr Sewell's speech (from approximately 12.36pm to approximately 12.38pm), Ms Keen could be heard speaking concurrently about the second intrusion at the LWS rally.

117 At approximately 12.48pm, the Nazis dismounted the steps of Parliament House and began to walk towards the north end of Spring Street. A police officer stopped them and led them to cross Spring Street towards the footpath near Bourke Street (Fernando HD footage at 1.06.43).

118 Two more police officers approached the Nazis, who then began to perform the Nazi salute pointed in a northerly direction, where the Socialist Alternative protesters were still gathered (Fernando HD footage at 1.06.54).

119 The Nazis, as they turned to walk south on Spring Street, continued to perform the Nazi salute towards the protesters that had gathered on and around Bourke Street (Keen footage at 1.07.11).

120 Just after 1pm, the Socialist Alternative protesters emerged behind the Bourke Street protesters, further west on Bourke Street. They were seen to approach the Bourke Street protesters and ultimately join them in standing on Bourke Street opposite Parliament House.

121 At around this time, police on horseback, who were previously on the far north police line, began to reinforce a line of police along Bourke Street (Fernando HD footage at 1.20.48).

122 At approximately 1.16pm (Keen footage at 1.10.01), Mrs Deeming commenced her speech which concluded at approximately 1.18pm (Keen footage at 1.12.06).

123 Mrs Deeming read a message from a Muslim friend of hers as follows:

> Alright. My name's Moira Deeming I'm a newly elected MP in the Victorian Parliament. People told me that I only got elected because nobody knew what I thought, but I've doing this for fifteen years with my friends in the Greens party and the Labor party and every party conceivable. Today, I'm actually going to read a message from a Muslim friend of mine who was too afraid to be here because of behaviour like that. She has said that she came to Australia because she knew that in Australia human rights were advocated for strongly and she would have protection in Australia. She thought that Australia was a paradise, especially for herself as a woman. And she thought that in Australia everybody, regardless of religion, ethnicity, sexual orientation any other belief of any other kind they've got to respect each other's beliefs and boundaries. And now she is devastated to find out that she has less rights in Australia than she did back home. She has said that boundaries are the emotional, mental and physical fences of every human that are erected in order to protect and maintain our psychological and physical needs, whether it be a human or an animal and if an animal can understand and respect boundaries, why can't they? She's seeking that the government will do their job and stand up for the rights that she was promised when she came to Australia lawfully and legally. And then she said, "if the LGTBQI can have their rights, that's fine, but why does it involve taking away everybody else's rights?" And she wants to say a big thank you to everybody out here today and especially Kellie-Jay. Thank you.

124 At approximately 1.42pm Ms Keen began making closing remarks, and at around 1.47pm she ended the livestream of the rally.

125 I have rewatched the video evidence of those events.

126 It is fair to say that depicts chaotic scenes.

127 Mr Fernando's footage, in particular, continuously weaved between the various groups of protestors and counter protestors. There was a cacophony of yelling, chanting, clapping, banging of drums and saucepans, rattling of tambourines, blowing of whistles and wailing of sirens. Numerous people spoke (often simultaneously) on megaphones. The noise largely seemed to emanate from the Bourke Street protestors, but it is sometimes difficult to tell from Mr Fernando's footage because he was constantly moving around.

128 Protestors waved flags of different kinds, and held homemade signs and banners promoting various agendas. Police officers traversed Spring Street on foot and on horseback. Mr Fernando captured a number of altercations and various exchanges of angry words. And while the lines formed by the police mostly separate the various groups, there remained a flow of people wandering up and down Spring Street.

After the rally

129 At 2.20pm, a journalist sent to Mr Southwick two links with screenshots. The first was a screenshot of a video of Nazis performing the Nazi salute on the steps of Parliament House. The second was vision of police walking Nazis through the area around the steps of Parliament House (Ex R181).

130 Mr Southwick then telephoned Mrs Deeming.

131 They gave different evidence about what precisely was said, but Mr Southwick and Mrs Deeming did agree that Mr Southwick said that he had seen photos of the Nazis performing the Nazi salute in Spring Street; that the matter was serious; and that Mrs Deeming needed to denounce it in a press release.

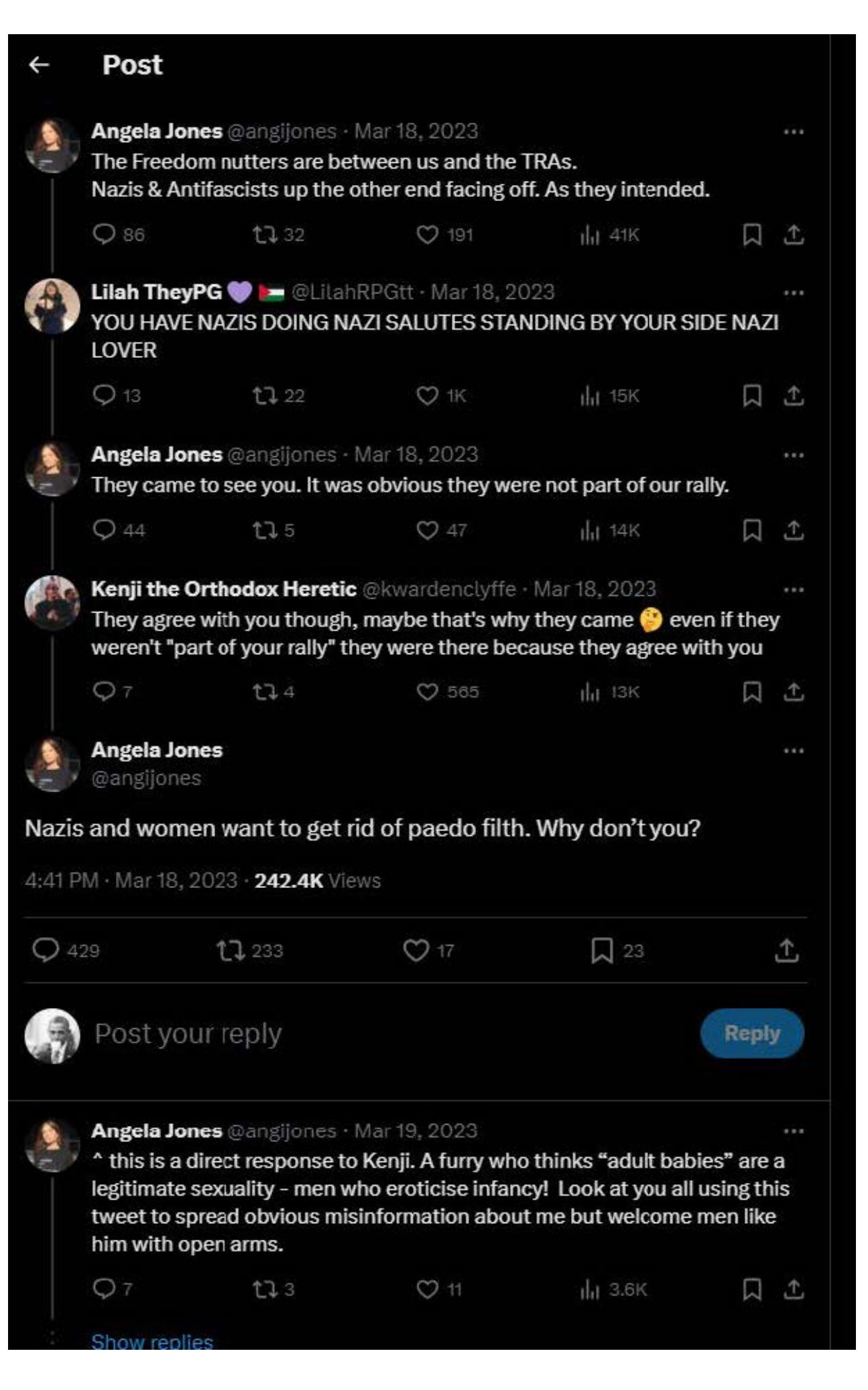
132 Mrs Deeming deposed that after her conversation with Mr Southwick, she told Ms Keen about his request. She gave evidence that she asked Ms Keen "if we could find a way to make it clear those men had nothing to do with us in a way that was not degrading and did not deflect the focus from the purpose of the rally." She further deposed that Ms Keen "suggested we could do a livestream where we focused on the women and how brave they had been and what a success the day had been and that we could mention the idiot Nazis in passing as having been unwelcome intruders, but that she would not be issuing a grovelling media statement."

133 After speaking to Mrs Deeming, at 2.55pm Mr Southwick exchanged text messages with Mr Brad Battin MP, then Shadow Police Minister (Ex R182; CC:264). He then spoke to Mr Battin and they agreed to issue a joint statement condemning the Nazis.

134 Mr Southwick then telephoned Mr Woff. They had a brief conversation about a draft press release. At 3.04pm Mr Woff sent a WhatsApp message to Mr Southwick with the draft press release (Ex A138; CC:265), which read:

> Todays [sic] incident on the steps of Parliament are a shock to every Victorian who values our inclusive, tolerant and multicultural community.
>
> Right wing extremists are becoming more aggressive and emboldened and despite recent efforts to tighten laws to protect the community from such intolerance, this behaviour continues seemingly without consequence.
>
> This behaviour is simply acceptable [sic]. We cannot allow neo-Nazis to goose step and salute on the front steps of our democracy with impunity.
>
> I have formally raised this issue with Victoria Police for potential breach of anti-discrimination legislation and will continue to push for those involved to be held to account.

135 At 4.41pm, Ms Jones published a post on Twitter which read, "Nazis and women want to get rid of paedo filth. Why don't you?" (the **Jones tweet**). The Jones tweet was part of an exchange, which read in full:



Post

Angela Jones @angijones · Mar 18, 2023
The Freedom nutters are between us and the TRAs.
Nazis & Antifascists up the other end facing off. As they intended.
86 32 191 41K

Lilah TheyPG 💜🇵🇸 @LilahRPGtt · Mar 18, 2023
YOU HAVE NAZIS DOING NAZI SALUTES STANDING BY YOUR SIDE NAZI LOVER
13 22 1K 15K

Angela Jones @angijones · Mar 18, 2023
They came to see you. It was obvious they were not part of our rally.
44 5 47 14K

Kenji the Orthodox Heretic @kwardenclyffe · Mar 18, 2023
They agree with you though, maybe that's why they came 🤔 even if they weren't "part of your rally" they were there because they agree with you
7 4 565 13K

Angela Jones
@angijones

Nazis and women want to get rid of paedo filth. Why don't you?

4:41 PM · Mar 18, 2023 · **242.4K** Views

429 233 17 23

Post your reply

Reply

Angela Jones @angijones · Mar 19, 2023
^ this is a direct response to Kenji. A furry who thinks "adult babies" are a legitimate sexuality – men who eroticise infancy! Look at you all using this tweet to spread obvious misinformation about me but welcome men like him with open arms.
7 3 11 3.6K

Show replies

136 At 4.42pm, Mr Southwick posted a tweet condemning the Nazis, as follows: "Today's incident on the steps [sic] Parliament House is an affront to every Victorian who values our inclusive, tolerant and multicultural community. The behaviours today by neo-Nazis are a deliberate attempt to incite hatred and violence and are nothing short of sickening" (Ex R185; CC:270).

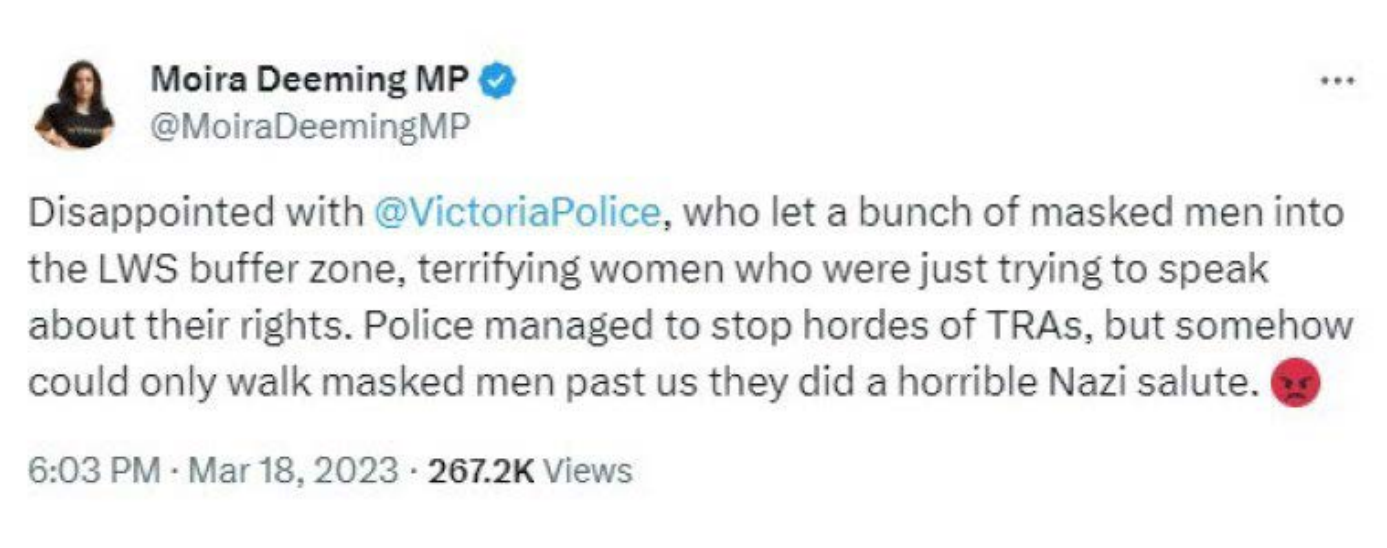
137 At 5.37pm, Mr Josh Burns MP, the Federal Labor Member for the seat of McNamara, posted a tweet with a screenshot of a media statement headed "Statement on Neo-Nazis in Melbourne CBD" (Ex R186):

> The ugly alliance between anti-trans bullies and neo-Nazis on display in the city today was extremely confronting.
>
> Both groups seek to bully and blame minority groups in their dark ideology. Scapegoating minorities is their business model, and it has no place in Australia.
>
> History showed that minorities, including the LGBTIQA+ community, have been targeted before. It's nasty, its bigoted and it should be called out.
>
> The brazen marching with neo-Nazi salutes in front of the Victorian Parliament is unacceptable. This is a time for us to consider whether tougher laws are needed.

138 At 5.59pm, the joint press release of Mr Southwick and Mr Battin was released to the media by Mr Woff (Ex A141; CC:274). It read as follows:

> Today's incident on the steps [sic] Parliament House is an affront to every Victorian who values our inclusive, tolerant and multicultural community.
>
> The behaviours today by neo-Nazis are a deliberate attempt to incite hatred and violence and are nothing short of sickening.
>
> These shameful individuals and the hateful ideology they push have no place in our state and must never be tolerated.
>
> The Victorian Liberals and Nationals continue to support the frontline officers Victoria Police, who continue to focus on community safety in frequently dangerous and complex situations.
>
> The Andrews Labor Government must join with the Liberals and Nationals to ensure Victoria Police have the powers, resources and training to stamp out these shocking acts of hate.

139 At 6.03pm, Mrs Deeming published the following tweet (Ex A142; CC:275) (**18 March tweet**):



Moira Deeming MP
@MoiraDeemingMP

Disappointed with @VictoriaPolice, who let a bunch of masked men into the LWS buffer zone, terrifying women who were just trying to speak about their rights. Police managed to stop hordes of TRAs, but somehow could only walk masked men past us they did a horrible Nazi salute. 😡

6:03 PM · Mar 18, 2023 · **267.2K** Views

140 That evening, Ms Keen, together with Mrs Deeming, Ms Jones and Ms Katherine Deves, filmed the livestream which Ms Keen had suggested, starting at 7.46pm. (Ms Deves is a former Federal Liberal Party candidate who also spoke at the LWS rally.) The video was uploaded to YouTube at 8.13pm (Ex A258).

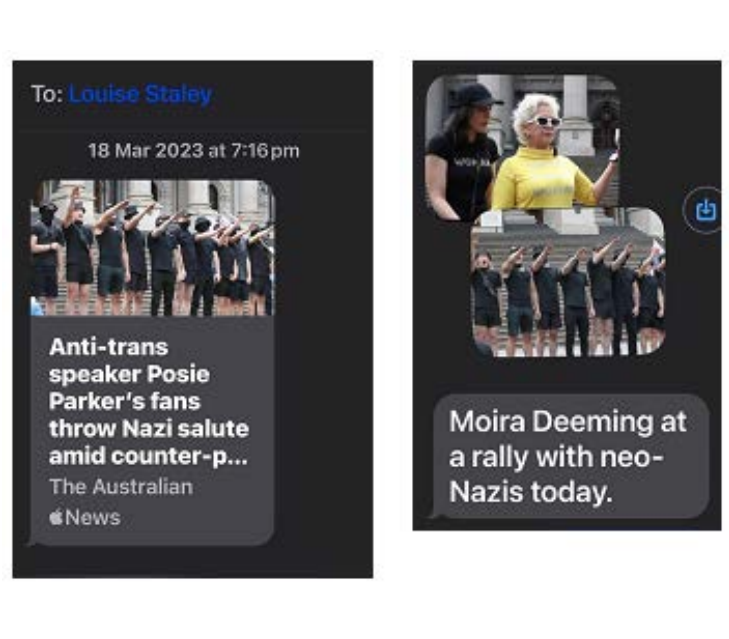
141 That video and a transcript of it were in evidence (Ex R37 and Ex R38 respectively). It was sometimes referred to as "the champagne video", because each of the women (except Ms Jones) sipped a little champagne during the course of it (it lasts 24 minutes in all).

142 Counsel for Mr Pesutto sought to make much of it during the hearing, so it is necessary to set out the transcript of the relevant exchanges, as follows:

> KJK [Ms Keen]: What a day! So I'm here with some evil TERFs [trans-exclusionary radical feminists] uh down under. We're calling this, I'm calling this TERF talk down under it's a concept that I've come up with [*all laugh*]. I have Angie Jones here, who is the TERF talk down under content deliverer. I've got Kathy, Katherine Deves, uh myself I'm Kelly[-Jay] and this is Moira Deeming who's an MP and we've just had an exceptionally interesting um day …
>
> …
>
> Yeah, ah Kath what about you?
>
> KD [Ms Deves]: I thought the speeches today were absolutely magnificent um what some of those women got up, they were shaky when they got off the microphone they were so brave again it was such a varied mix of women, varied mix of experiences and if the people who are the detractors or the media who have been and some of whom have been absolutely just remiss in how they've reported this if they actually listened to what the women had to say they'd understand what we're about so I think this is a fantastic record for history and I'm really proud of everyone who worked to put it together today.
>
> KJK: Yeah me too. I'm particularly I think Australian women are quite funny. I think there was a lot of humour in a lot of the speeches. What about you Moira?
>
> MD [Mrs Deeming]: Look as a newly elected MP it was really interesting for me and vindicating to see women from every single political party uniting over these basic human rights. It was also wonderful to see uh just how protective everybody was of each other, you know we had a couple of people uh become very violent so some trans activists pretended to be a part of our group.
>
> Obviously there was that group of masked men who came in, we didn't know who they were but we were concentrating on these people at the front and you know one woman was knocked unconscious and taken to hospital. I got kicked in the shins a whole bunch of times.
>
> But they were dealt with within you known under, under, under a minute each, we dealt with them we got rid of them and we just carried on and that's what we'll continue to do and it was just a fun day and it was really great.
>
> …
>
> KJK: And let me just say for the record and I'm not speaking for anybody else in this room but if somebody comes and poses a risk to women, I'm kind of all right with a bit of, a little bit of violent kind of pulling them out of the way uh proportionate violence um and getting them out of the way and away from women as a risk.
>
> …
>
> So we had to wrap up that's why we finished a little bit sort of quick[l]y and we had to really rush the speeches at the end and then obviously there was some other people occupying the steps which I think we all thought we were told by security were antifa because they were all in black with black masks so we thought they were antifa and they were just over there but I think it's safe to say, there were so many risks, potential risks in our crowd.
>
> …
>
> KJK: But should we talk about, um, to talk about the elephant in the room Moira because you're going to complain…
>
> MD: Yes.
>
> KJK: …because we had, we're not when we both got there so we had, we were told that well we both thought that there was antifa um and I was told even putting my uh tripod at the top of the steps there was a very militant, there was a very militant police officer that was like get [off] the steps don't stand on the steps, don't stand on the steps, don't stand the steps. Really wouldn't let us stand there and we had a permit for where we did stand but there were other people that didn't have a permit.
>
> MD: Yes so the thing that I found very confusing was that we were assured by the police and as I say, it seems to us while we were there that everything was going well that the police were trying to help us and I think the majority were but when I was alerted to the fact that they were all these masked men coming towards us they were all in black we couldn't see their faces I thought that the trans rights activists had broken through the line and we're about to get attacked.
>
> I honestly just thought this is it yep I'm about to, we're all about to get attacked. Um but the police were very, very calm and you know they had set up a big buffer zone, they had set up you know a boundary but they were talking to these people and letting them stand on the steps and take photos I was told later that they had a banner or something.
>
> You know, but then I was also told later that one of our marshals had stood like this with her arms out to stop them from coming in because like me like most women there we thought that they were antifa, they had broken through the lines we were about to get attacked and the police for some reason that I do not understand, ushered them in let them have photos on the steps next to us and then instead of pushing them back out the same way that they came in, took them right through that the middle of the buffer zone that they had been, you know, at great pains to separate us all um from either side of, they just walked them right through the middle and, and then right as they were in the centre in front of all those cameras they did a Nazi salute and that was horrifying but, you know, that was only a split second because then you know they would continue to be escorted out and so I thought oh good they've taken them out but it was only later on I thought why did they even let them in here, what, how were they able to keep all those trans rights activists, the ones who were punching horses, how did they keep all of those people away from us but they just welcomed in and let these people in black masks you couldn't see their faces, no identifying, um
>
> AJ [Ms Jones]: They looked like black bloc, they did, they looked like black bloc…
>
> MD: You know, there was no symbols. People are saying, you know, why didn't you tell the Nazis to leave well there was no Nazi symbols on them I thought they were antifa um until they put their hands up like that I thought they were the trans rights activists um and then when they did that you know they were being escorted out and it was over.
>
> KJK: Well the funny thing is as well they shout at me you can't run you can't hide you've got Nazis on your side and they're really angry shouting that I'm this thing and this apparent thing that they really hate when they those men did that Nazi salute…
>
> MD: There's no reaction
>
> KJK: There was no reaction whatsoever, those trans activists didn't get more angry didn't shout didn't get more agres… they didn't do anything,
>
> MD: It was as if they were saying hello. [*Laughter*]
>
> KJK: Maybe it was that maybe to their friends but um I think it's very interesting because I think any one of us recognisable women had walked that same bit down there they would have broken through they would have attacked us and I just… something about all of this doesn't make any sense it feels really off, it feels like they were either… I mean look in the UK we had police impregnating women who were animal rights campaigners right and we, we had those police um infiltrating groups.
>
> I don't think it's beyond the wit of anyone to think that that either was uh TRAs dressed up or police or just… something was just off because there wasn't enough violence between the two men. …
>
> MD: Best case scenario was a massive mistake by the police to let these unidentifiable masked men in because all of us women were terrified.
>
> KJK: Yeah.
>
> MD: We did not understand why they were there. The police had been successfully keeping everyone else away and then all of a sudden there were these terrifying big strong masked men and we didn't know why they were there and we know now that the police knew that they weren't with us because they obviously escorted them away from us and away from the protest and uh and that our own marshals had asked them to leave.
>
> KJK: But I don't so I, I guess it's not really for us to work out why the police suddenly escorted them away.
>
> MD: Through the middle.
>
> KJK: I mean that's nuts but I wonder what prompted them to leave because I didn't really notice them.
>
> AJ: Yeah, they didn't come near us. We all had our backs to these guys on the on the um steps we had our backs to these blokes and so there's a few of us milling around once we realized they weren't a threat we kind of turned our backs and we've just got on with it yeah and so the reason that there's no photos out there of the Nazis with us "the Nazis" inverted commas with us is because they were never with us they were like way over there.
>
> We all had our backs we were facing the opposite direction so when the police marched them out they marched them towards the trans rights activists past the trans rights activists, they saluted at the trans rights activist and the trans rights activists didn't even blink and kept yelling at us women.
>
> KJK: Yeah.
>
> KD: It's very strange.
>
> …
>
> KD: … it is really quite viscerally scary and you think… you have those moments where you think my God all I'm doing is standing here saying: women have the right to sex based rights, stop messing with our kids, let us have our freedom of speech and this is the response people need to start waking up to the fact as to how powerful and how dangerous this movement really is I mean as we know they've infiltrated our, our institutions Our Judiciary our parliaments our media and so on and the fact that even the police are afraid of their violence I mean we need to ask who, who are the baddies here people because I don't think it was the group of middle-aged women standing there in our sun hats a few with our husbands listening to other women speak.
>
> KJK: But look that that that won't stop us uh next stop is wherever I'm going next Tasmania, Hobart, um and then it's going to be Canberra and then we're coming to uh New Zealand which will be interesting I'm not even sure goodness knows I don't think anything can be quite as um Exciting um as today but yeah the speeches from Australian women have just been sublime uh it's like they've been holding their breath for quite some time and so have just come out with the most um wonderful things and the f word said in an Australian accent is particularly wonderful but thank you all of you thank you for your hard work in making this.
>
> MD: Thank you for coming to Australia thank you for coming to Melbourne, we appreciate it.
>
> KJK: Well here's to us being amazing cheers everyone [*all clink glasses*] and goodbye people at home.
>
> KD: Good evening everyone.
>
> KJK: Bye.

143 That same evening, Mr Pesutto attended the Victorian Multicultural Gala Dinner, together with Mr Southwick and Ms Crozier.

144 At 7.16pm, Ms Staley sent a text to Mr Pesutto with a link to an article in *The Australian* about the Nazis at Parliament House, which pictured Mrs Deeming but did not name her or identify her as an MP. Ms Staley also sent a screenshot to Mr Pesutto of the pictures in *The Australian* article, including one of Mrs Deeming, and informed him "Moira Deeming at a rally with neo-Nazis today", as follows (Ex R189):



To: Louise Staley

18 Mar 2023 at 7:16 pm

Anti-trans speaker Posie Parker's fans throw Nazi salute amid counter-p...
The Australian
News

Moira Deeming at a rally with neo-Nazis today.

145 Ms Staley and Mr Pesutto then exchanged texts. Ms Staley said, "You need to consider expelling [Mrs Deeming] from the Party room for consorting with nazis. You can't have that link and be elected to government." Mr Pesutto responded, "Agree".

146 At 7.21pm, Ms Staley also sent a text message to Mr Southwick to the same effect (Ex A259).

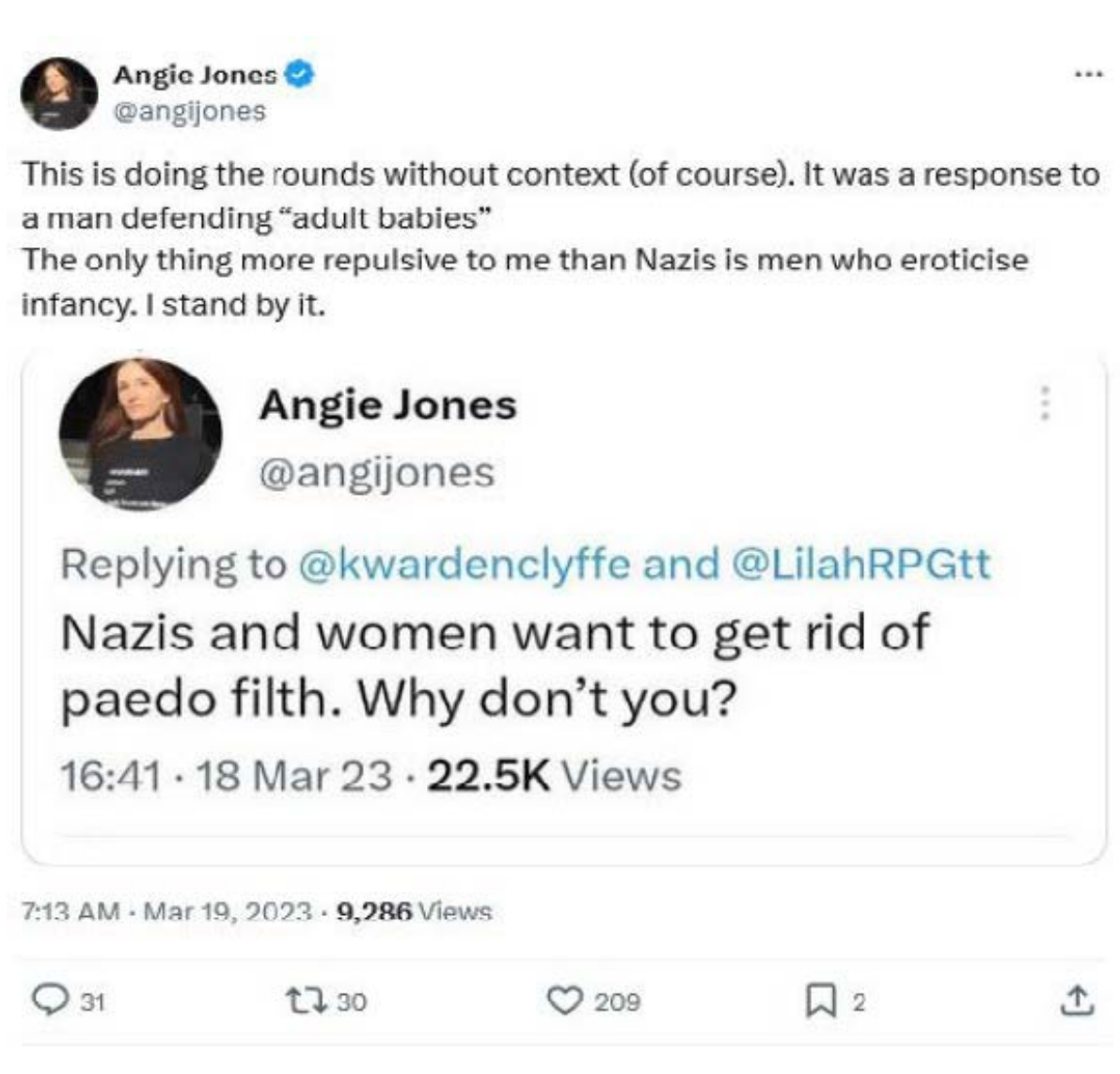
147 From 7.30pm, Mr Pesutto exchanged text messages with Mr Southwick about it (Ex R191; CC:278).

148 At 9.14pm, Mr Matthew Guy MP, Liberal Member for Bulleen in the Legislative Assembly, sent a text message to Mr Pesutto and Mr Southwick (Ex R192; CC:279) volunteering to move an expulsion motion against Mrs Deeming: "Just letting you know that if you want an expulsion motion moved on Deeming, and no one else will do it, I will".

149 Either that evening or the following morning, Mr Pesutto and Mr Southwick discussed the LWS rally and their views that Mrs Deeming's attendance was likely to hurt the Liberal Party. In the course of that discussion, Mr Southwick told Mr Pesutto he had spoken to Mrs Deeming about the LWS rally, and had told her that she needed to immediately distance herself from it and the neo-Nazis who attended (CB:30, 337[54]–[55]).

19 March 2023

150 At 7.13am, Ms Jones published the following tweet (Ex A147; CC:291):



Angie Jones
@angijones

This is doing the rounds without context (of course). It was a response to a man defending "adult babies"
The only thing more repulsive to me than Nazis is men who eroticise infancy. I stand by it.

Angie Jones
@angijones
Replying to @kwardenclyffe and @LilahRPGtt
Nazis and women want to get rid of paedo filth. Why don't you?
16:41 · 18 Mar 23 · **22.5K** Views

7:13 AM · Mar 19, 2023 · **9,286** Views

31 30 209 2

151 At 8.25am, Mr Pesutto sent a text message to Mr Pintos-Lopez, who had started in the role of chief of staff to Mr Pesutto a few days earlier, indicating he had spoken to Mr Southwick about meeting with Mrs Deeming at 5pm that day. Mr Pesutto asked Mr Pintos-Lopez over the phone to conduct some research on the LWS rally and what had happened at it (Ex A148; CB:30, 337[65]).

152 At 9.20am, Mr Adam Bandt MP, Federal Member for Melbourne and Leader of the Australian Greens, posted a string of tweets on Twitter (Ex R30; CC:293), which grouped together read as follows:

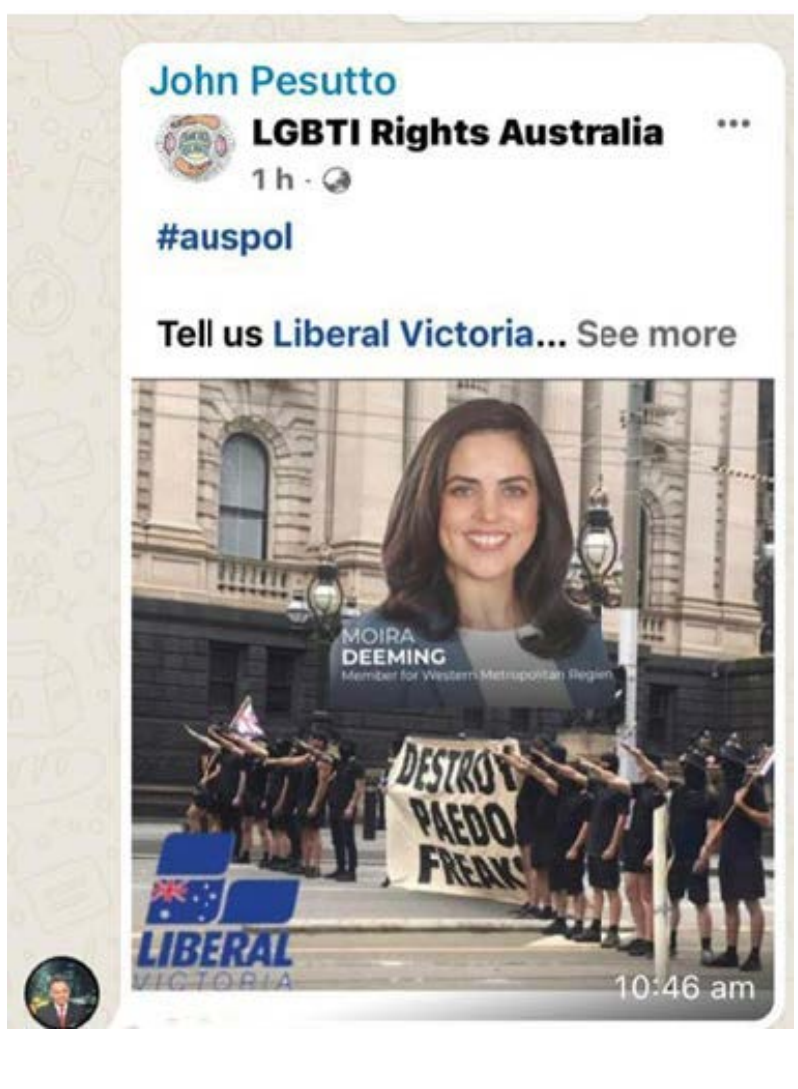
> I'm disgusted by the anti-trans rally in Melbourne yesterday, protected by their allies: saluting neo-Nazis. The banners they march under and the hate they espouse have no place here or anywhere. The rise of far-right extremism and white nationalism has ASIO's directors 'gravely concerned', with the Australian Army today uncovering links to neo-Nazi groups within their own ranks. The alarm bells have been ringing for years. The Government needs to unblock its ears. Footage of police kneeing an anti-fascist protester in the back of the head, whilst making way for neo-Nazis to march & salute down Spring Street is deeply disturbing to watch. This is not Melbourne. Every time a powerful figure in the media or politics uses the trans community as a political football, a masked coward grows more confident. Stop. The words we say matter, so let mine be unequivocal and clear: Trans Lives Matter.

153 Between 9.45am and 10.46am, Mr Fernando published a series of tweets about the LWS rally, some of which embedded footage Mr Fernando had recorded on the previous day. These tweets are referred to at ACS [142] and [145].

154 Shortly after 9.51am, Mr Pesutto, Mr Southwick and Mr Pintos-Lopez had a conference call. Mr Pintos-Lopez deposed that he advised that they should proceed "carefully and methodically"; that they "needed to slow down and not take any action precipitously"; and that they "first needed to gather and understand all the relevant facts". His affidavit explained as follows (CB:37, 441[17]):

> I said words to the effect to Mr Pesutto and Mr Southwick that we needed to manage any political and reputational implications for the Party of Mrs Deeming's attendance at the Rally and the potential connection between the Rally organisers and the neo-Nazis carefully and methodically. I said that we needed to slow down and not take any action precipitously and that we first needed to gather and understand all the relevant facts. I said words to the effect that any action that the Leadership Team might take needed to be measured and justified. I said that I did not believe that we should do anything other than gather information on the Sunday and that if any action was required, the reason to act needed to be explained to the party room and to the electorate, if necessary, during the week and prior to taking that action if any. I understood from what Mr Pesutto and Mr Southwick said following my giving them that advice that they wished to act that day rather than slowing down as I had advised.

155 At 10.46am, Mr Pesutto sent the following screenshot on WhatsApp to a group called "Leadership Media" (Ex R200; CC:298):



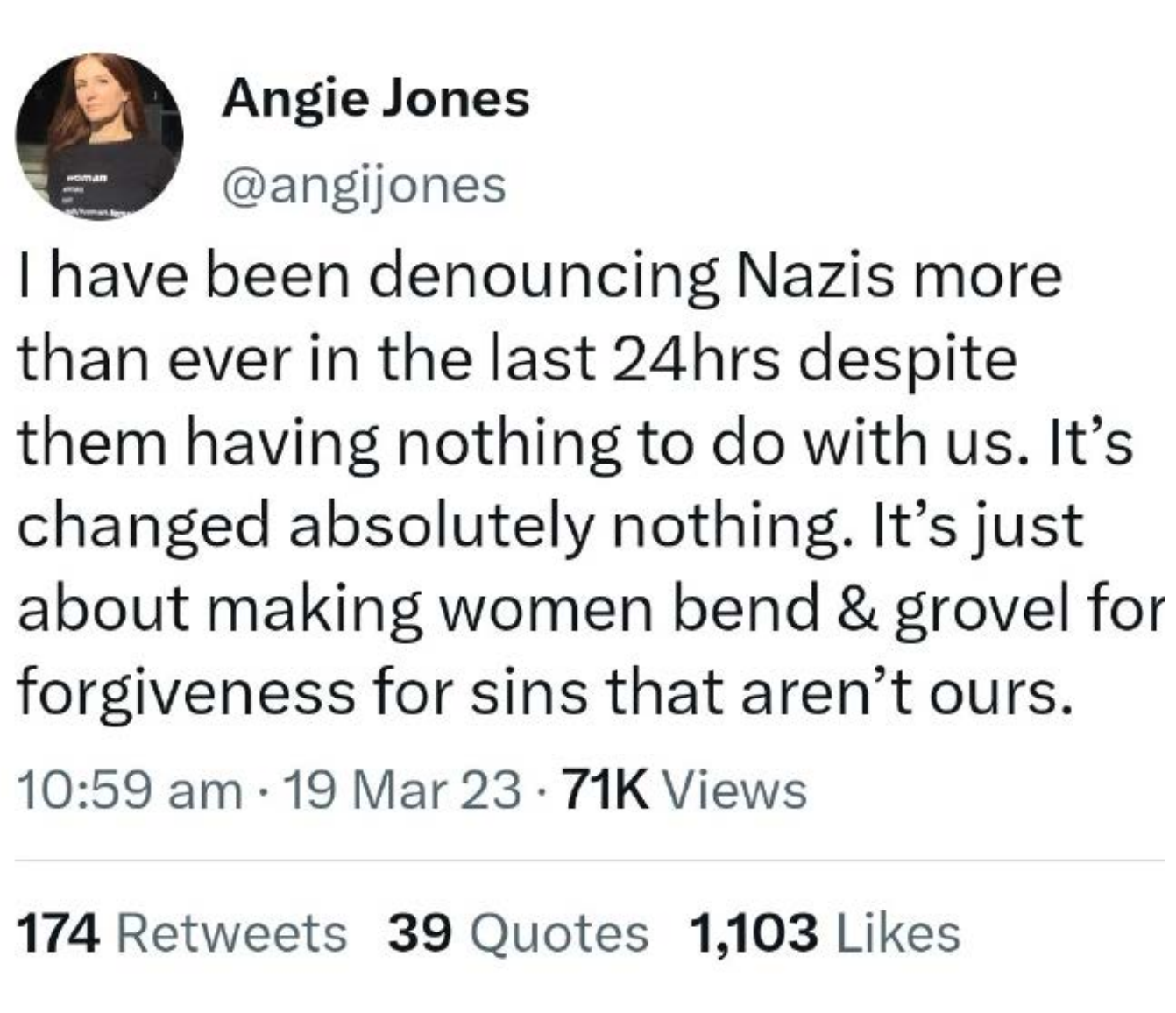
John Pesutto
LGBTI Rights Australia
1 h ·
#auspol

Tell us Liberal Victoria... See more

10:46 am

156 At 10.48am, Mr Pintos-Lopez sent a message to Mr Johnston asking him to draft a press release coming from Mrs Deeming "about the Parliament house demonstrations yesterday" and requesting that they have a short call about it (CB:37, 441[20]; Ex R201; CC:299).

157 At 10.59am, Ms Jones published the following tweet (Ex A150; CC:300):



Angie Jones
@angijones

I have been denouncing Nazis more than ever in the last 24hrs despite them having nothing to do with us. It's changed absolutely nothing. It's just about making women bend & grovel for forgiveness for sins that aren't ours.

10:59 am · 19 Mar 23 · **71K** Views

174 Retweets **39** Quotes **1,103** Likes

158 At about 11am, Mrs Deeming received a call from Ms Crozier asking her to attend a meeting with the Parliamentary Liberal Party **leadership team** (which comprised Mr Pesutto, Ms Crozier, Mr Southwick and Dr Bach) at the party's offices in the Melbourne CBD (CB:1, 13[58]).

159 At 11.11am, the then Premier of Victoria, Mr Daniel Andrews AC, posted a string of tweets on Twitter which grouped together read as follows (Ex R32; CC:301):

> I won't share a photo because they simply don't deserve the attention. But yesterday, anti-trans activists gathered to spread hate. And on the steps of our Parliament, some of them performed a Nazi salute. I wish it didn't have to be said, but clearly it does: Nazis aren't welcome. Not on Parliament's steps. Not anywhere. They were there to say the trans community don't deserve rights, safety or dignity. That's what Nazis do. Their evil ideology is to scapegoat minorities - and it's got no place here. And those who stand with them don't, either. So to every trans Victorian, I say this: Our Government will always support you. And we'll always respect you. Because your rights are not negotiable.

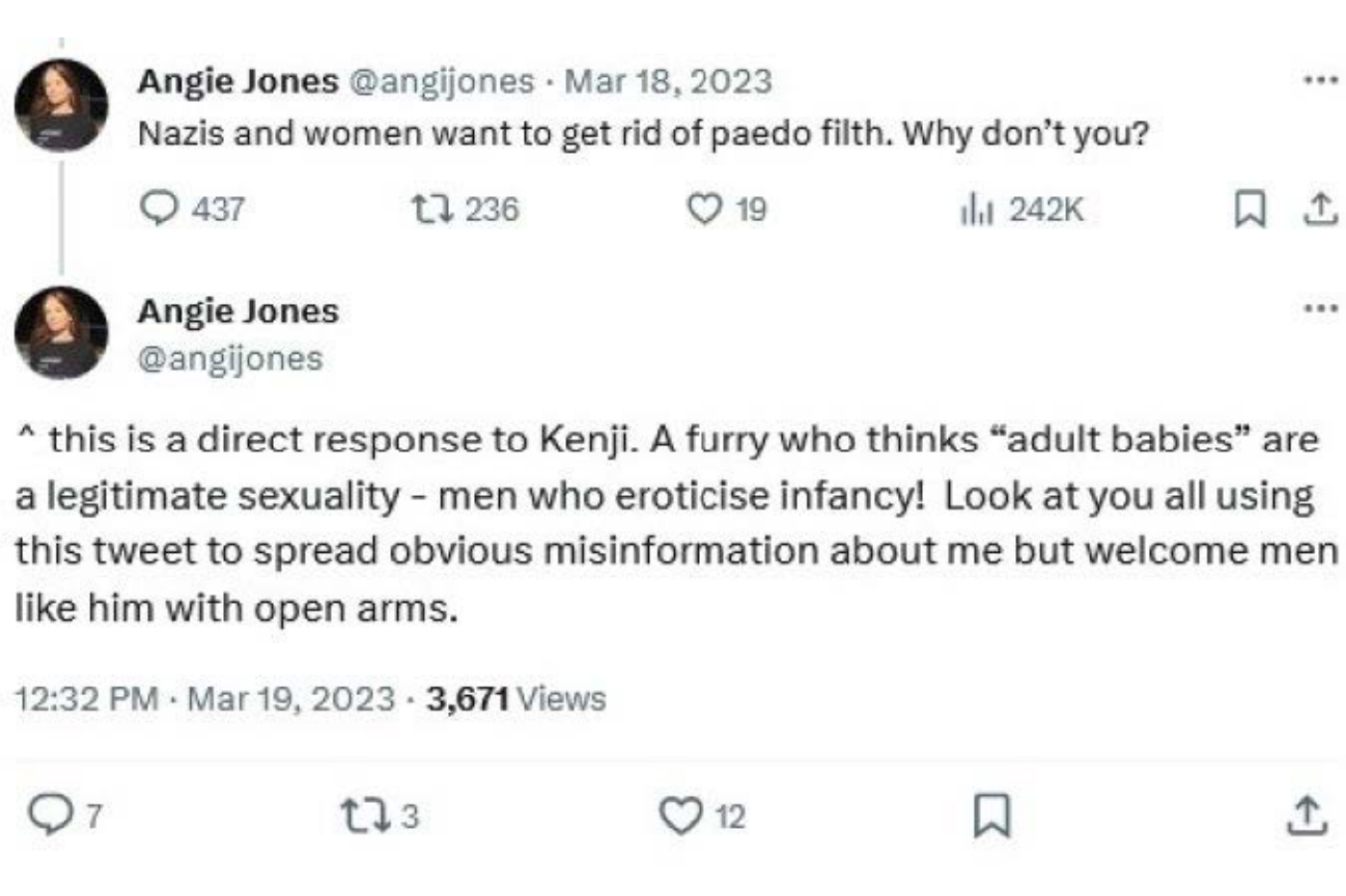
160 At some point after midday, Mr Pintos-Lopez attended the office and commenced research on the LWS rally and its organisers.

161 Around the same time, Mr Riordan and his wife were hosting about 200 people at a lunch at their home in Colac, many of them from the Liberal Party (CB:20, 247[8]; T1145.1–4). Mr Pesutto and Ms Crozier attended.

162 At 12.26pm, when he was being driven to Mr Riordan's home, Mr Pesutto recorded a draft press release as an electronic note on his mobile phone, about what he referred to as Mrs Deeming's "resignation", as follows (Ex A40; CC:303):

> On Saturday evening, Victorians saw an abomination on the steps of the Victorian Parliament when Nazi protestors engaged in an affront to the values we should all hold dear as Victorians.
>
> The violence, prejudice and hate that these protestors conveyed by their odious actions will never be acceptable in our state. I condemn them and commit to opposing such hate wherever it may exist.
>
> This afternoon, I met with Moira Deeming MP to discuss the events of Saturday.
>
> Mrs Deeming assured me that she was not involved in the organisation or actions of the Nazi protestors. I have no reason to doubt Mrs Deeming's account.
>
> Nevertheless, following our discussion, Mrs Deeming tendered her resignation as a member of the Parliamentary Liberal Party. I believe this was an appropriate step for her to take and obviates the need to explore alternatives.
>
> The Liberal Party I joined, and which I am now honoured to lead, must strive to represent all Victorians.
>
> Regardless of religious faith, race, sexual preference, ethnicity or other attribute, Victorians everywhere should know that the Liberal Party is inclusive and can be a voice for them.
>
> No matter what our particular attributes, we all share the abiding bond of an essential humanity.
>
> Equality of opportunity, the benefits to each and all of an enterprising culture, the security that comes from the rule of law, the strength which stems from families and communities that can live together in search of happiness while sharing in our state's prosperity, must extend to all people who reside in our land.

163 At 12.32pm, Ms Jones posted this tweet as a "reply" to the Jones tweet (Ex A144; CC:287):



Angie Jones @angijones · Mar 18, 2023
Nazis and women want to get rid of paedo filth. Why don't you?
437 236 19 242K

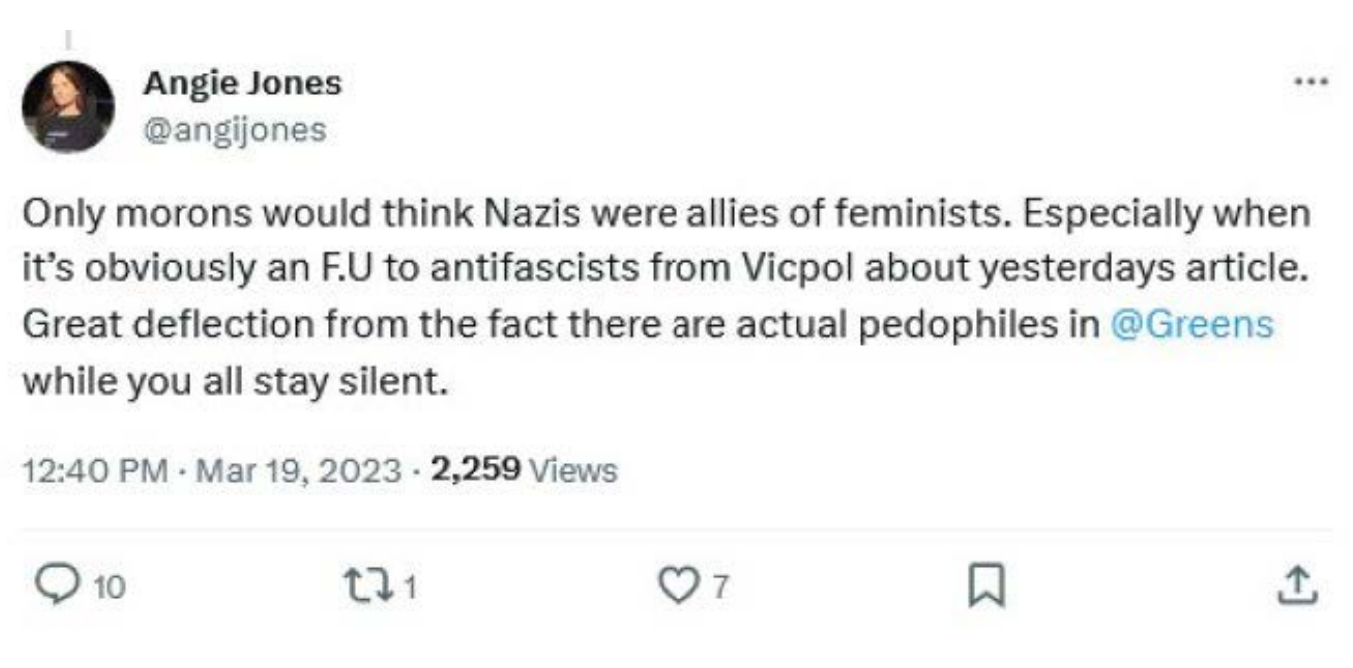
Angie Jones
@angijones

^ this is a direct response to Kenji. A furry who thinks "adult babies" are a legitimate sexuality – men who eroticise infancy! Look at you all using this tweet to spread obvious misinformation about me but welcome men like him with open arms.

12:32 PM · Mar 19, 2023 · **3,671** Views

7 3 12

164 At 12.40pm, Ms Jones posted a further tweet in reply (Ex A145; CC:289):



Angie Jones
@angijones

Only morons would think Nazis were allies of feminists. Especially when it's obviously an F.U to antifascists from Vicpol about yesterdays article. Great deflection from the fact there are actual pedophiles in @Greens while you all stay silent.

12:40 PM · Mar 19, 2023 · **2,259** Views

10 1 7

165 At approximately 1.50pm, the Australian Jewish Association published a statement on Facebook which relevantly said as follows (Ex A39):

> NAZIS CRASH WOMEN'S RALLY IN MELBOURNE – questions raised re police behaviour
>
> Yesterday a "Let Women Speak" rally was held in Melbourne featuring visiting British women's advocate Kellie-Jay Keen-Minshull (also known as Posie Parker) as well as local women. This movement is concerned that biological men are undermining the integrity of women's sport and spaces such as bathrooms.
>
> [Australian Jewish Association] unreservedly condemns the Nazis who invaded the rally. These ugly thugs likely saw an opportunity to hijack the event for their own publicity.
>
> …
>
> The Nazis were condemned by the women's rally organisers – one contacted AJA in distress explaining what had happened. The "Let Women Speak" organisers had nothing to do with the Nazis.
>
> It is shameful that some politicians and media are now trying to smear this women's movement with the false accusation of involvement with Nazis.

166 The leadership team was scheduled to meet with Mrs Deeming at 5pm, but she went to the wrong address and ended up being about 20 minutes late (T1146.8–19). While waiting for her, Ms Crozier, Mr Pesutto, Mr Southwick, and Dr Bach met Mr Pintos-Lopez and Mr Johnston.

167 The meeting between the leadership team and Mr Pintos-Lopez and Mr Johnston lasted about 20 minutes. It is not clear on the evidence precisely what occurred or what was discussed, however it seems that Mr Pintos-Lopez gave an account to the others of certain information he had found out, mainly about Ms Keen.

168 At 5.21pm, Mr Pesutto then sent to Mr Johnston the contents of the electronic note he had drafted in the car earlier in the day (Ex A152), set out at [162] above. Mr Johnston then sent the note to Mr Woff (CC:314).

169 After he left the meeting, Mr Johnston telephoned Mr Woff about the draft press release. Mr Woff gave evidence in cross-examination that Mr Johnston told him that "Moira was gone, and he said it's just a matter of how this plays out, referencing whether she would resign from the Parliamentary Liberal Party or whether John and … the leadership team would move a motion to expel her" (T1177.20–23).

The 19 March meeting

170 At 5.24pm, Mrs Deeming entered the meeting room with Ms Crozier, where Mr Pesutto, Mr Southwick, Dr Bach and Mr Pintos-Lopez were waiting.

171 Mr Southwick then commenced secretly to record the meeting on his mobile phone. His recordings of the meeting are Ex A227 and Ex A228.

172 One might have been excused for thinking that given that every word of the meeting was recorded (in two parts, because there was a break) there would no longer be a dispute about who said what to whom. The parties, however, remained in "dispute … as to the characterisation of the [meeting]" (Agreed Factual Narrative [84]).

173 The first part of the meeting ran for 70 minutes. The transcript of it comprises 30 single spaced pages (Ex A2).

174 I have done my best to distil the relevant extracts from it to a manageable length, as follows:

> **JP** [Mr Pesutto] So Moira, thanks for coming in. I think you know what it's roughly pertaining to, obviously the events of yesterday. So, look, just wanted to go through the implications of all of that and what it means for us as a party, and as a team wanting to win in 2026. I think I'd start just by some general comments about what I'm trying to do as leader … So, my concerns about yesterday, and I will ask for your, obviously, feedback on this and thoughts on this, is that the arrival of the Nazi – I will call them Nazi protestors, but the whoever they are – I am going to call them that because that that frankly is how everybody sees them, right, the media sees them –
>
> **MD** [Mrs Deeming] – I think that's what they are.
>
> **JP** Yeah. So, the Nazi protestors arrive and whether you like it or not, when the media and everybody looking at it, whether we like it or not, whether we dispute it vehemently or not, when the media see that, they see them attached to you, they see them attached to me, they see them attached to us. And now, we've got a problem, a huge problem now, because people think, rightly or wrongly, that we walk in lockstep with Nazi protestors and Nazis. And I'm getting clobbered, not just on social media, I'm getting messages from people now, and that will build, this is not going away this is actually going to, I think, intensify as a story

> and I say that because I think if you look at, the way that – this is my suspicion – if you look at the way the media is reporting it they are referring only to Katherine [Deves] and they haven't talked about you yet. But having been around the oval a few times, that's coming and that's my feeling. I think Andrews in his tweets today is signalling that this is what their week is going to be about.
>
> …
>
> Now I know you will have a different view, and you can tell us about that and I really want to hear from you about it, but that's the view, and it's going to be toxic for us. We will not be able to get any kind of messages up, we will not be able to campaign on anything, we will just be confronted with that wherever we turn up. I think at this stage I might just leave it there. They're just my general concerns and I really just wanted to hear from you to see what you wanted to say about yesterday because I also need to know from you exactly, and we can work through this in the discussion, exactly what happened. I don't know whether when the Nazis arrived and you saw them, whether you left, whether you stayed, I'd be interested to know what happened there, but it's very serious for us. And the damage it will do to us is hard to estimate. And all I'm trying to do with all of us as a team is to try to get us over the line in 2026, I'm actually convinced that we can, but stuff like this will stop us from doing that. So, Moira, I'm just going to leave my opening comments there but I throw over to you, obviously respond as you see appropriate, but I'm keen to know, factually, the presence of the Nazis, and whether there was [sic] any connections there before or after, and what happened when you saw them arrive, because that's going to come out when the media start digging on this stuff.
>
> **MD** Very obviously I'm not a Nazi and I don't support Nazis. They arrived just in black as far as I can tell, they were to the - there somewhere. They were to the left of some big pole. Everyone thought they were the other people that had gotten through the lines. The only footage that I have seen of them, you know doing any – I didn't find out that they had done the Nazi salute on those steps until after the event. The first time I saw them doing the Nazi salute was when they were being ushered by the police through the middle of the zone. And I was thinking, "oh my gosh, there are Nazis here, that's terrible, but at least the police are taking them away."
>
> …
>
> **JP** Weren't you involved in the organisation [of the LWS rally]?
>
> **MD** Right at the end. I can show you text messages. I was not the main organiser. The main organiser was Angie Jones who is a Jewish woman. They're all left-wing women.
>
> …
>
> Nobody knew who they were. The police weren't panicking. They said that they would keep everybody away, have a buffer zone, and when they, like when I finally noticed them – I honestly don't know the time they got there. We were dealing with crazy people right around us, right a [metre] away from us. I mean, the police have said that they didn't have enough people, that there were all these different groups. The Australian Jewish Association has come out and said that we had nothing to do with it, if I was an organiser, but, you know, the Standing for Women people who, yes, I helped, but I wasn't – I didn't do the initial organisation and I don't know why I would be blamed for some random, horrible people turning up that had no insignia, I had no ability, none of us had any ability to know who they were until they put their hand up, which was when they were being escorted off the premises as far as we could see.
>
> **JP** Doesn't it occur to you though, Moira, that you're an MP, you're got a high profile now, doesn't it occur to you that when you participate in protests like this you are going to draw people from all over the place? Particularly people like the Sewells or the –
>
> **MD** – No, why would a Nazi group come there? They weren't there supporting us, they've said on their own page – oh that's the other thing you should know, I guess. So, I said that there was a horrible Nazi salute, because I know you don't just call people Nazis because that's insulting to Jewish people, because I didn't know who they were. And then later on the newspapers came out, apparently some of them didn't have a mask on and they identified them, and they are Nazis. Terrible. But those people, whoever they are, those Nazis, have come out and said that they were there protesting both groups. They've said it themselves. They weren't –
>
> **JP** – So they weren't there, they've said they weren't there to support you?
>
> **MD** They've said, or whoever that guy is, I don't know his name –
>
> **JP** – or the – Posie Parker –
>
> **MD** – I don't know who he is, but whoever they identified as being, I don't know, with them or one of their leaders, he runs XYZ or something, and he's got this whole post about how no he didn't come there to support them. He came to protest both of them, because Standing for Women is – I mean, he's insane. He's like a pro lesbian, atheist. I don't know. They're Nazis. They're insane. They were not with that group, they literally stood – the police let them stand on the other side of that pole and take a photo and then walk right through the crowd. I only saw them when they walked through the crowd. Everyone panicked. I don't know what time it was, because we had other protestors. I was assaulted. A woman was knocked unconscious and had to go to hospital. Those crazy trans rights activists were punching horses. The police asked us to finish up early, and they liaised with me because I had – I knew the police officer in charge, Lisa, from March for the Babies, so she just reached out to me because she knew me, and she knew that I was reasonable, and I lobbied for the police to get them to finish early because they were hurting the horses and it was going insane. And I said, "I'll do my best," you know, "I'm not in charge of it, but I'll ask her."
>
> …
>
> **MD** – and I do understand that everything has come in a row. My maiden speech, International Women's Day, and this, it is so unfortunate that they came in a row, but I made sure I didn't say that I spoke on behalf of the Liberal Party. A Muslim woman asked me to give her message. I don't know what those Nazi group are about, but I, you know – everybody knows, the police know, the Australian Jewish Association know, all the Standing for Women group know, everyone has condemned them. Everyone has said they weren't invited …
>
> **JP** As I said earlier, I'm not concerned about the substantive issue you feel strongly about, this is not about that. This is about Nazi links and perceived –
>
> **MD** – Are you accusing me of actual Nazi links?
>
> **JP** No, to the protest. To the protest –
>
> **MD** – How –
>
> **JP** – and the people you were working with.
>
> …
>
> Can you assure us that nobody you've worked with has any sympathies or, you know, liaisons with Nazis groups?
>
> **MD** Absolutely none that I could possibly know about.
>
> …
>
> Because I had no ability to know that actual Nazis are going to turn up. No ability to know that.
>
> **JP** But how do you know that people working around you, people you might be associating with, who you're working with, don't have Nazi sympathies or –
>
> **MD** I mean they're from the left. And they're Jews, and they're lesbians and their atheists and their radical feminists. That's – and they've never said anything, anything that could possibly give me that impression.
>
> **JP** I mean, this does affect the whole team, and I'm not going to sugarcoat there is a mounting concern about whether your passion for this issue, which I do not doubt and I do not ask you to relinquish. I'm not saying you should not be passionate about this issue. I need to make that clear, but there is mounting concern, which I principally share as the leader, that this is not going to stop, and this is the second –
>
> **MD** So, can I ask a clarification question?
>
> **JP** Yep.
>
> **MD** So, if it's not about that issue and it's about the Nazi issue, haven't I just – like there's no evidence against me. They just turned up, there is footage to show that we didn't even like look at them.

175 Mr Pesutto then invited Mr Pintos-Lopez to go through some of "the stuff" he had found online. He said that he had conducted a cursory review online in particular about Ms Keen and found that:

> In October 2019, Keen appeared in a video interview with Jean-François Gariépy, a far-right YouTuber who advocates for a white ethno-state and has made videos with neo-Nazis Richard Spencer and Mark Collett, as well as former Ku Klux Klan leader David Duke. She's also given an interview to Soldiers of Christ Online, a far-right network. Then in terms of white supremacy allegations, one incident came after she took a selfie with Hans Jorgen Johansen, a Norwegian neo-Nazi who was probed by police after his comments against Jews and denial of the Holocaust. Parker was also accused of using a Barbie doll wearing a Nazi uniform as her profile picture on the social media site Spinster. Standing for Women's protest in Newcastle on January 16, she sparked a controversy after one of the speakers, Lisa Morgan, quoted Adolf Hitler to attack trans rights. This is the quote: "Do you know the big lie? The big lie was first described by Adolf Hitler in Mein Kampf. The Big Lie is that trans women are women", Morgan told the people at the Parker organised demonstration.

176 There then ensued a discussion about how to interpret the "big lie" quote and the Jones tweet (which, as set out above at [135] was, "Nazis and women want to get rid of paedo filth, why don't you?").

177 Mr Pesutto then said that "the entire LGBTI community will see that, and they – they will interpret that to mean, that if you're same sex attracted, if you are bi, if you are, whatever else you might be, you are paedo filth".

178 Mrs Deeming responded, "Yeah, I see what you're saying. I know her, I don't think that's what she was saying at all. Like, I'm just saying because I know her, I wouldn't have interpreted it like that. She's very pro LGB and T …"

179 About seven minutes further on, the discussion continued:

> **MD** In that clip I was saying you know, "we didn't know who they were, they came to–" look, I, at that stage I don't think I'd seen that they had identified someone.
>
> …
>
> I went straight out, you know. Anyway, look, I'm happy to condemn everything – I'm not arguing – like, I'm not defending them. Happy to condemn them. Happy to do that; eager to do that, that's fine.
>
> **JP** We'll have to think that through, I don't know –
>
> **MD** – Have you got an action you are going to take against me, like is this going somewhere?
>
> **JP** Possibly. In the interests of process, I want to think about what you've said and work it through. I guess there's no easy way to say this –
>
> …
>
> **MD** Look, you've just described it as a disaster, right, I honestly did not view those women as part of that, rightly or wrongly, and I accept that, I'm not arguing that. I don't want to spend 100 years arguing that. But honestly what views do you think that I have legitimately that are so terrible? Like do you actually think that, that I am some kind of a secret Nazi? Is that actually what you think about me?
>
> **JP** No, no, it's not the Nazi -
>
> **MD** But it's my views that keep getting condemned, my unspecific, unspecific views-
>
> **JP** No, no, so sorry, sorry, Moira. I do have to stop you there, I apologise. I do have to stop you. David [Southwick] was saying precisely the opposite. David was not condemning you for your views. In fact, he was doing the opposite, and respecting the fact that whatever views you have are yours.

180 Discussion then turned to the champagne video:

> **DS** [Mr Southwick] – They also – they all say on the couch, Moira. They're also on the couch, [Ms Jones] was saying about – she's using these inverted commas 'so called Nazis', and then this whole conspiracy theory that they were, they were part of the trans group that were dressed up. I mean, that's, that's way out kind of stuff.
>
> **MD** And I said –
>
> **DS** And you were on the couch when that happened?
>
> **MD** I calmed that down, I said no I think all the police were, you know, most of them were really good, I think they made a mistake in letting, you know I don't know why they let them through the middle.

181 Mr Pesutto then turned to what he called "a threshold question":

> **JP** Okay, so Moria [sic] I think there's a threshold question about whether you feel you can be part of the team, and whether we're convinced you can be part of the team. I have no doubt you feel so strongly about these issues that you would want to continue to do what you've been doing. And that's my concern. I'm very concerned that I think the damage that has already been sustained publicly for us is not the end of the matter, it's the start of the matter. And I'm very concerned about where Andrews is going to take it this week. They have been itching for something to clobber me with and this is it, it's coming. And I know you're annoyed sitting here, I can feel it. But I can tell you how much I was looking forward to meeting with the leadership – hang on let me finish. How much I was waiting and looking forward to planning what we've got planned this week on Redlich. We got some big stuff planned, but I have to tell you, I'm looking at it now and thinking, "can we even make that happen now?" Government's now got the wind in it sails. You see Andrews came out strong today on that tweet, right, which was signalling what's to come. They're out, they're off the ropes again. We've got them on the ropes. They're off the ropes again. And so that protest yesterday, whatever you might say about it, has given them the out. And we might, if we're lucky, be able to eke out a strategy for this week, but it's not going to be what we had planned. It's really bad. And again, putting aside whatever issues we all might have on things, Nazism is like the most toxic acid that can run through any political party and it's running through us, whether we like it or not, people think we turn the other cheek to Nazis. That's what they think, Moira. It's bad. So, I think the threshold –
>
> **MD** – And it needs to be fixed.
>
> **JP** Well the question is I suppose –
>
> **DS** – How do you propose to fix it?
>
> **MD** You said that I was annoyed sitting here –
>
> **JP** – It felt like that because you were –
>
> **MD** No, no, no, no, that's true, but you have, you know, convinced me that that does look way worse than I thought. To be fair I genuinely don't think that, you've made me worry about Kellie-Jay Keen, but I do not think Katherine Deves and I do not think that Ange Jones is actually – I don't really think any of them are –
>
> …
>
> **MD –** I'm not trying to defend it, I'm not trying to argue with you. I was all offended that you could think that I was a Nazi until you made that case.
>
> **DS** No, we're not –
>
> **JP** It's never been about accusing you of being a Nazi.
>
> **MD** No, no, no, but like even that I could be, you know – because, I was saying, "adjacent" of it, what are you talking about. Right, so that's fine. If you want to fix it, I'm open to suggestions, if you want like, you know, whatever you want to do that's fine. I just, I'm not – I don't want to argue as if I'm defending like Nazism. I just, I don't know what to do now.
>
> **JP** I think, so in the interest of candour, I came into this meeting thinking there were two outcomes, either you resign from the Parliamentary Party or I look at a process under the Parliamentary Party rules. I can't rule those out. I'm thinking, on the basis of our discussion, whether there is a third way which doesn't involve the same kind of outcome as those two options. I don't know that that's possible, to be honest, but in the interest of working through the process fairly I'm prepared to sort of confer with the leadership team, to take on board what you've said, and see if there's a way. But I just don't get the sense you appreciate how toxic this is for us with again, the issues – it is so toxic.
>
> …
>
> **JP** Well, can I say, I'm happy to explore this and no one would want this, not [inaudible] me, but I can't see a statement of any worth unless you disown those people, and I reckon you're probably not going to do that. If you do that would be good, but I don't think you are, because it's the only way that we can cauterize what's coming. What's coming is a series of pieces that links the worst comments and actions of those people, to you, to me, and then it's on. That's the only way –
>
> **MD** – Can't I just disown anything, any views or that they've said?
>
> …
>
> **GC** [Ms Crozier] But it's association, don't you see the association, you are there on a couch with these people who've got a long history of saying stuff in the public domain, which are pretty bloody offensive. They're pretty full on. And you are now associated with that through your own actions. We can't change any of that, right?
>
> **MD** Can I just. One – just one point of clarification here. I'm treating the transgender laws as separate to the Nazi thing, right? You may not be able to say. So, the transgender laws thing, you know, I honestly think that we just got so much support, that I have so much support on that. Rightly or wrongly, I'm just saying, that was my view. The Nazi thing, that was from my perspective, believe it or not, just so out of left field. So out of left field. I honestly thought it was the other side. Anyway, so that's easy to condemn, like just flat out. And I, because, like, I don't know what she has said in the past. So, to just condemn in general, I don't know, Nazism, you know the beliefs, that would make more sense because what if I leave something out, and I don't want to condemn a whole person, I just want to say that if they've said that then I disagree with that or –
>
> **JP** – But Moira, I mean, look it's a question for you but do you even as a political figure, I mean you're [a] public figure, do you actually want to be associated with Angie Jones?
>
> **MD** I just don't want to set a standard where just because I'm talking to someone or agree with someone on one thing, that means I agree with them on everything. Or that I have to –
>
> **JP** I'm sorry, what I should have clarified is, do you actually want to be associated with a person who basically will be interpreted as saying that anybody who's in the LGBTI community is paedo filth, is that the kind of person, as you as a public figure –
>
> **MD**– No, but honestly –
>
> **JP** – That just kills us.
>
> **MD** And I'm happy to make a statement that that's not what I believe. I just don't think. I honestly don't think that's what she believes.
>
> **JP** I think you've got that wrong.
>
> **MD** And I think she needs to have a clarification statement because clearly that's not the way it's coming across –
>
> **JP** We're not talking to Angie –
>
> **GC** No, no, no we're not going there.
>
> **MD** No, no, just for herself, I think she needs –
>
> **JP** So, I mean in terms of. You know, so if we were to posit that there are three general scenarios, with the one in the middle being that we work on a statement, it would need be pretty hard, it would need to go a long way to disassociating yourself from them and disassociating us. But I guess, if I can go back to the threshold issue, if you want to be able to prosecute these issues, and this is – this was part of my reasoning, if you want to be able prosecute these issues, with the same passion you've got, I know – I know your passionate about these things so, I get it, but if you want to be able to continue to do that, the best way to do that might be to be an independent, to give you complete freedom. If you want to be in the party, it's possible to do that without having to relinquish your views, or walk away from the things you believe in, but there would have to be some clear, if you like, road rules. You can't hang out with these people. You just can't. You can't go to rallies. You're a senior figure of the Liberal Party, you represent all of us … But as a public figure, with responsibilities, as a senior liberal you'd have to be prepared to make sure that all of your language – and I'm not saying it has or hasn't been – I'm saying that the language would have to protect us at all times the team would have to be protected, from anything you say which doesn't mean you can't go out and argue case for things but that it protects the team at all times and protects our ability to win. If that, comparing that with the first scenario or the third, if that's possible, if you're willing to do that, then it may be – I don't know we would have to work through it and see if it's possible, then it may be possible to do something, but there is a fundamental question – and ultimately, Moira, I think – I think you have to be happy with what you've landed on because if you – I can tell you now, if you agree to something that deep down you're not really happy with, genuinely you're not happy with, and feels like it in any way hampers your ability to argue the cases you want to argue then you're not going to be happy and it will manifest itself somewhere, somehow, it just does.
>
> **MD** I agree.
>
> **JP** So you have got to be ultimately happy.
>
> **MD** I agree. But obviously I'm not interested in promoting Nazism, it's not a problem, you've told me I don't have to give up my – you know my arguments about the laws about balancing sex-based rights …
>
> **JP** … if you are going to be bringing down Katherine Deves, then whatever we are talking about, I'll be honest with you, whatever we are talking about, we could find Daniel Andrews robbing a 7-Eleven, but if you bring Katherine Deves down, everyone is going to go "don't care about that, Katherine Deves is in town," … And this is why I say to you, I genuinely say, it's a really tough call for you, because I think the best thing you can do for yourself, if you don't mind me saying, is honestly arriving at a decision to say what do I really passionately want to do. Because if you want to keep doing that, I think that first option of going your own way would be the best. But I don't- the reason I say that is I don't want you to be under any misapprehension about what's required in the statement and not just the statement but what follows it … It means disowning those people, I will not, I will not be associated by one or two times removed with Angie Jones. I will not … but if you are prepared to do that, that's how I think it can work, but it's a big ask, and if you want to be able to keep doing those things, that's why I think, you know, just, you know, have a sense of what it really does require, because it's big, it's doable, but it requires a big change. I don't know if you need any time to think we're going to, we're talking about a lot of issues, unless there is anything else you wanted to contribute, Moira, but I'd like some time to think and maybe just confer if that's all right. I mean, I genuinely want to explore the options, Moira.

182 Dr Bach then intervened, expressing the view that he did not see a way forward, and describing Mrs Deeming's people and her "mob" as having "a long history of sympathizing with neo-Nazis and white supremacists", as follows:

> It's been good to listen, it's been good to hear your views, Moira. Even in that, in coming back, in seeking, pointedly, I think, from you, so to seek to lessen some of the shocking things that these – your friends – have said, demonstrates to me that – I don't think there is a way forward. So, for me, the issue is your friends, the people you worked with, the people you showed through Parliament, very openly and publicly, have a long history of sympathizing with neo-Nazis and white supremacists. And you said a little while back, John, you know, you wanted to explore and see if there is a way forward. I – this – I don't think there is. These are your people, and I don't mind saying also, I don't think a reasonable person would believe you, that you had no idea that these are the long standing, stated views of your people. I don't believe you. And it's absolutely clear to me, from what you've said, that you don't get the seriousness of that, at all. Your mob have stated white supremacist views and still we're arguing about exactly what they might have mean – … when they call trans people paedophiles, which, of course in and of itself, is quite disgusting and disgraceful, so, for mine, I don't see a way forward.

183 After a few minutes of further discussion, Mr Southwick asked Mrs Deeming "…[if] the Anti-Defamation Commission … asked … what are your thoughts about the Liberal Party having one of their own associated with these Nazis?" Mr Pesutto interjected, saying "[a]ssociation is a flexible word, and you leave yourself open".

184 Mr Southwick and then Mr Pesutto continued:

> **DS** And it's not the people that marched on the steps, they were – they were the icing on the cake, it was the individuals that you had champagne with who have had selfies with Nazis.
>
> **JP** So Moira, I think that that option's difficult, I wouldn't say it's impossible but I worry that Matt's right, I don't think it would be believed, but I'd give it chance, but there's nothing we can do tonight, we can't force any outcome on you but I am concerned about the damage that this has done to the party. I'm inclined to think that a resignation's the best thing to do, because it would involve - avoid a whole lot of other, you know, difficult time for the party. But if you really, honestly feel that you could cut yourself away from these people then I'm prepared to look at it but I couldn't give a guarantee that it would be enough. As I said, I would want to think through it, I just think the damage is deep, and it's- we haven't even got through the toughest part of it yet, which is coming.

185 Mrs Deeming then said, "I don't have a problem at all, and I look forward to denouncing Nazism and, I don't know, anything similar and any accusations of paedophilia for the trans community. No problem at all. I don't believe those things … I know it sounds stupid to you, but honestly, I did not read those the way that you have read them, and I'm not arguing with you …"

186 Mrs Deeming then said that "this seems insane to me" and concluded:

> [O]f course I don't think that a whole group of people are paedophiles because of their sexuality or gender identity. Of course, I'm not a Nazi and I don't support Nazism. I'm more than happy to condemn all of that. It's just a real shock to me, it's just a real shock to me that those were the ones that you thought were Nazis.
>
> …
>
> I'm not arguing, I'm not arguing. I'm just telling you the truth. I thought you were going to come in here and talk to me about those people in black.

187 The leadership team then left the meeting and returned about 20 minutes later. Mr Pesutto then said that "[w]e've had quite a long discussion where we fleshed through everything" and that "[t]he long and short of it, Moira, is as a group we don't think a statement will work". He continued:

> The damage is deep and a statement won't get us there. And what I'm going to do is ask the Party Room to support a motion to remove you from the Parliamentary Party. I'm sorry it's come to this, and it's not done personally. I have to put the team first and nothing I think about gets past, gets me past the concern I have that the damage to the team and our prospects is too severe. The Party Room will decide, but I'll put it to them that in the circumstances for the reasons we've gone through today, that's what I'm going to do. If you wanted to, you could resign in the meantime but that's a matter for you, I can't force anything on that front. It would save everyone a whole lot of, you know, the energy that goes into these things but, Moira, I'm going to proceed on that basis. If you do want to resign, let me know, but I propose to advise the Party Room immediately. I won't have a formal motion done, but I will get that out as soon as I possibly can. Again, I'm very sorry it's come to this. But I just don't feel I have a choice. And again, at the risk of repeating myself, it's not personal, I'm putting the team first and I just feel I need to do that. I'm sorry we kept you waiting so long but we did have - we did exhaust every possible angle of the issues, we don't do this with any joy at all, but it's necessary in my view to bring it before the Party Room. In terms of process, when a motion is circulated, it would come from me. I need to move it, I need to give 5 days' notice, so that would – if I can get a notice out tomorrow it would be the business day that, the 5 days excluding any business days. So, I imagine that would be on the Monday or Tuesday but there would be 5 days there and then my understanding of the process is that you'll be given a chance to address the Party Room I think is what happens. I wasn't there when Bernie went through the same thing, but I stress that the reasons for it relate to the matters concerning links of people to self-confessed and self-professed Nazis which we just cannot take that on as a party. We are committed to winning in 2026 and this stuff will ensure that we don't win and I'm already being attacked again on social media but this time by ministers of the government who are already gunning for me this week. It's not going anywhere. So, Moira, I'm sorry it's come to this but that's where I've landed.

188 The meeting ended at around 7pm.

189 Mr Southwick did not tell any of his colleagues in the leadership team that he had recorded the meeting (T999.31–32), and he did not disclose the existence of the recordings to anyone, until he told Mr Pesutto about it either in late 2023 or early 2024 (neither could remember precisely when).

190 When he was asked in cross-examination why he had secretly recorded the meeting, Mr Southwick answered (T998.23–41, T999.25–29):

> [T]he events of 18 March was a very triggering event for me. It was, I think, as was just shown in the – in the press conference, one of the darkest days for a member of the Jewish community to be exposed by what we were exposed to. As somebody that has always fought against hate, racism and – and everything that pretty much transpired on that day, it was – it was me that pretty much – and we will go through that, I am sure, in terms of the details of me contacting Ms Deeming. And I had specific expectations of Ms Deeming from that call, and – and it would be fair to say that I was more than disappointed in terms of what actually happened; I was shocked in terms of what actually happened. I felt that from those events, and following from the call, and also later from the – the champagne video and – and the trivialisation of what was the darkest day that I have known in terms of – of hate on the steps of parliament, to behave that way and to trivialise what was so offensive to me, I felt that I couldn't trust Ms Deeming. She – she lied to me, and I felt that I needed to protect myself from what was about to happen, should that happen. And I can say I haven't taped a private conversation with a colleague, but this for me was something that was very personal, and it was personal to me, and that's why I taped it.
>
> …
>
> The conversation that I had with Ms Deeming the – the day before was, obviously, a conversation between her and I, and I wanted to make sure that – that the whole events weren't turned around and misconstrued. So for me that was – that was the key element of why I did tape it, and – and it was, for me, I suppose, in many respects an insurance policy.

191 Mr Pesutto did not tell his lawyers that he knew that Mr Southwick had made the recordings until one week before the trial commenced, upon which it was immediately produced to Mrs Deeming's solicitors.

192 Both Mr Southwick and Mr Pesutto swore that they did not listen to the tape before preparing their respective affidavits.

193 It is an extraordinary state of affairs that both of them sat by, knowing of the existence of the recordings, and said nothing, when they knew that each other member of their own leadership team, Mr Pintos-Lopez – and Mrs Deeming – were preparing and had filed and served affidavits (including in reply) of their best recollections of who said what to whom at the meeting.

194 It is equally extraordinary that Mr Pesutto instructed his lawyers to make an application to me for Dr Bach to give his evidence from England via video link, which was supported by a 13-page summary of the differences between the evidence of Dr Bach on the one hand and the evidence of Mrs Deeming on the other hand about what was said at the 19 March meeting. (I refused the application in large part precisely because of the significant differences in their respective recollections. See *Deeming v Pesutto* [2024] FCA 951.)

195 As it turns out, no witness's account of the meeting in their affidavits was anywhere near accurate or complete. Both parties invited me to draw adverse inferences against each relevant deponent for having failed to give an accurate account of it.

196 Each witness might be said to varying degrees to have provided their own slant to things, and to have recorded their memories through the prism of their own cause, but I do not accept that any witness gave a deliberately untruthful version of the meeting in their affidavits.

197 Although Mr Southwick said he recorded the meeting because he had formed the view that he could not trust Mrs Deeming and he saw the recordings as an "insurance policy", it is mystifying why he kept the existence of the recordings a secret for so long after Mrs Deeming had commenced this proceeding against his leader. Mr Pesutto's explanation for not having discovered the existence of the recordings – he thought that if he did not ask Mr Southwick for copies of the recordings they could not be said to be within his "power, possession or control" within the meaning of the *Federal Court Rules 2011* (Cth) about a party's obligation to discover such documents – is also dubious, although that said I accept that his evidence in that regard reflected a view of his obligation of discovery that he honestly held.

198 I return now to the chronology of relevant facts.

Drafting of the media release

199 While the 19 March meeting was taking place, Mr Woff and Mr Johnston were working on a draft media release for Mr Pesutto.

200 At 5.31pm, Mr Woff sent an email to himself which contained the contents of Mr Pesutto's electronic note (Ex A66; CC:317).

201 At 5.47pm, Mr Woff sent an email to Mr Johnston amending the contents of the electronic note, replacing the statement that Mrs Deeming had "tendered her resignation as a member of the Parliamentary Liberal Party" with a place holder, namely "Nevertheless, following our discussion xxx" (Ex A153; CC:318).

202 In his covering email to Mr Johnston, Mr Woff said, "Statement is good but missing a 'why?' If we believe her account and she wasn't involved with Nazis – why is she being removed? Will be first question asked."

203 At 5.56pm, Mr Johnston sent an email to Mr Woff amending the draft media release so that it now read as follows (Ex R75; CC:319):

> Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protestors engaged in an affront to the values we should all hold dear as Victorians.
>
> The violence, prejudice and hate that these protestors conveyed by their odious actions will never be acceptable in our state. I condemn them and commit to opposing such hate wherever it may exist.
>
> This afternoon, I met with Moira Deeming MP to discuss the events of Saturday and her association with neo-Nazis which has come to light as a result of the events of yesterday
>
> At our meeting I informed Ms Deeming that I intend to move a motion at the next party room meeting to expel her as a member of the Parliamentary Liberal Party as her position is untenable.
>
> This is not an issue about free speech but a member of the parliamentary party associating with neo-Nazis and what they represent.
>
> The Liberal Party I joined, and which I am now honoured to lead, must strive to represent all Victorians.
>
> Regardless of religious faith, race, sexual preference or ethnicity, Victorians everywhere should know that the Liberal Party is inclusive and can be a voice for them.
>
> No matter what our background we all share the abiding bond of an essential humanity.
>
> Equality of opportunity, the benefits to each and all of an enterprising culture, the security that comes from the rule of law, the strength which stems from families and communities that can live together in search of happiness while sharing in our state's prosperity, must extend to all people who reside in our land.

204 At 6.03pm, Mr Woff sent an email to Mr Johnston amending the draft media release sent to him by Mr Johnston at 5.56pm by adding Mr Pesutto's letterhead, a title ("Statement from the Leader of the Opposition") and date (Ex A154; CC:321).

205 At 6.59pm, Mr Johnston sent an email to Mr Woff, amending the draft media release (sent to him by Mr Woff at 6.03pm) so that it referred to Mrs Deeming's "association with neo-Nazi sympathisers" not "her association with neo-Nazis" (Ex A155; CC:323).

After the 19 March meeting

206 After the 19 March meeting, but still on 19 March, Mr Pesutto and others from the leadership team made calls to other MPs to inform them of the decision to seek to expel Mrs Deeming.

207 Mr Pesutto called Mr Hodgett and Mr Wells; Mr Southwick called Mr Riordan; and Ms Crozier called Ms Heath.

208 There is a dispute between the parties as to what precisely was said during these calls.

209 The only dispute worthy of mention concerns the evidence given by Mr Wells that Mr Pesutto said to him that Mrs Deeming "had organised a group of Nazis to attend the LWS rally".

210 Mr Pesutto deposed in his 27 May 2024 affidavit, and insisted in cross-examination, that he did not believe he would have said this, believing he would have used the same words he used in other calls that night – that is, referring to links of people to Nazis.

211 Mr Pesutto invited me to find that Mr Wells was untruthful. I make no such finding. Mr Wells quite clearly and honestly believed that Mr Pesutto had said what he claimed him to have said, but the probabilities favour the conclusion that he was mistaken, and I so find.

212 At 7.23pm, Mr Johnston sent an email to Mr Woff (Ex A156) again amending the draft media release (sent to him by Mr Johnston at 6.59pm) by removing the reference to Mrs Deeming's "association with neo-Nazis sympathisers". The relevant sentences then read:

> This afternoon, I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating with speakers and organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists … This is not an issue about free speech but a member of the parliamentary party associating with people whose views are abhorrent to my values, the values of the Liberal party and the wider community.

213 At 7.41pm, Mr Johnston sent an email to Mr Woff (Ex A157; CC:326), again amending the draft media release (sent by Mr Johnston at 7.27pm) so that the first sentence now read:

> This afternoon, I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups, including neo-Nazi activists.

214 At 7.53pm, Mr Woff sent an email to Mr Johnston with a minor amendment to the final paragraph of the draft media release (sent to him by Mr Johnston at 7.41pm), which replaced the words "all people who reside in Victoria" with "all people who live in Victoria" (Ex A158; CC:327).

215 At 8.30pm, Mr Pintos-Lopez sent his research document (recorded as being created an hour earlier) to Mr Johnston and copied it to Mr Pesutto (Ex A38; CC:328). It was in these terms:

> **KELLIE-JAY KEEN *AKA* POSIE PARKER'S NEO-NAZI LINKS WITH FAR-RIGHT**
>
> 1. Keen, is a British anti-transgender rights activist and the founder of the group Standing for Women.
>
> 2. Keen has used posters, billboards, stickers, and social media to promote anti-trans messages, and she has organized events in the United Kingdom and the United States that have been protested by supporters of transgender rights: *Wikipedia* (accessed 19 March 2023).
>
> 3. Keen's associations with neo-Nazis and far-right activists:
>
> - In October 2019, Keen appeared in a video interview with Jean-François Gariépy, a far-right YouTuber who advocates for a "white ethno-state" and has made videos with neo-Nazis Richard B. Spencer and Mark Collett as well as former Ku Klux Klan leader David Duke.1
>
> - In 2019, gave an interview to Soldiers of Christ Online, a far-right network.2 Keen denied prior knowledge of the interviewers' far-right affiliations.
>
> - Parker has faced numerous allegations of courting ideas of white supremacy. One incident came after she took a selfie with Hans Jørgen Lysglimt Johansen, a Norwegian neo-Nazi who was probed by police after his comments against Jews and denial of the Holocaust.3
>
> - Parker was also accused of using a Barbie doll wearing a Nazi uniform as her profile picture on the social media site Spinster.4
>
> - Standing for Women's protest in Newcastle on January 16 sparked controversy after one of the speakers – Lisa Morgan – quoted Adolf Hitler to attack trans rights. "Do you know the big lie? The big lie was first described by Adolf Hitler in Mein Kampf … The big lie is that trans women are women," Morgan told the people at the Parker-organised demonstration.5
>
> - Keen's Melbourne event on 18 March 2023, was supported by a group of at least 30 neo-Nazis, organized by the National Socialist Network, who were seen performing the Nazi salute on the steps of Parliament House and displaying a banner which read "DESTROY PAEDO FREAKS".6
>
> [Footnotes]
>
> 1 Parsons, Vic (15 October 2019). "Gender-critical feminist Posie Parker in video with white nationalist YouTuber – and a lot of Mumsnet users are fine with it". *Pink News*. Retrieved 19 October 2022.
>
> 2 Elliards, Xander (4 February 2023). "Who is Posie Parker? The controversial anti-trans activist heading to Scotland". *The National* (Scotland).
>
> 3 Same as above.
>
> 4 Same as above.
>
> 5 Same as above.
>
> 6 *Anderson, Anthony (18 March 2023)*. "Anti-trans speaker's fans throw Nazi salute amid counterprotest". News.com.au.

216 The articles (in footnotes 1, 2 and 6) were hyperlinked.

217 At 8.36pm, Mr Pesutto sent an email to members of the Victorian Parliamentary Liberal Party, entitled "Moira Deeming", announcing his intention to move a motion to seek to expel Mrs Deeming as a member of the Victorian Parliamentary Liberal Party (Ex R210; CC:329), as follows:

> Dear colleagues
>
> Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protesters engaged in an affront to the values we should all hold dear as Victorians.
>
> The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our State. I condemn them and commit to opposing such hate wherever it may exist.
>
> This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating with speakers and organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.
>
> At our meeting I informed Ms Deeming that I intend to move a motion at the next party room meeting to expel her as a member of the parliamentary Liberal Party as her position is untenable.
>
> This is not an issue about free speech but a member of the parliamentary party associating with people whose views are abhorrent to my values, the values of the Liberal Party and the wider community.
>
> The Liberal Party I joined, and which I am now honoured to lead, must strive to represent all Victorians.
>
> Regardless of religious faith, race, sexual preference and identity, Victorians everywhere should know that the Liberal Party is inclusive and can be a voice for them.
>
> No matter what our background we all share the abiding bond of an essential humanity.
>
> Equality of opportunity, the benefits to each and all of an enterprising culture, the security that comes from the rule of law, the strength which stems from families and communities that can live together in search of happiness while sharing in Victoria's prosperity, must extend to all people who reside in our land.
>
> Tomorrow I will circulate the motion and provide further details regarding the process.

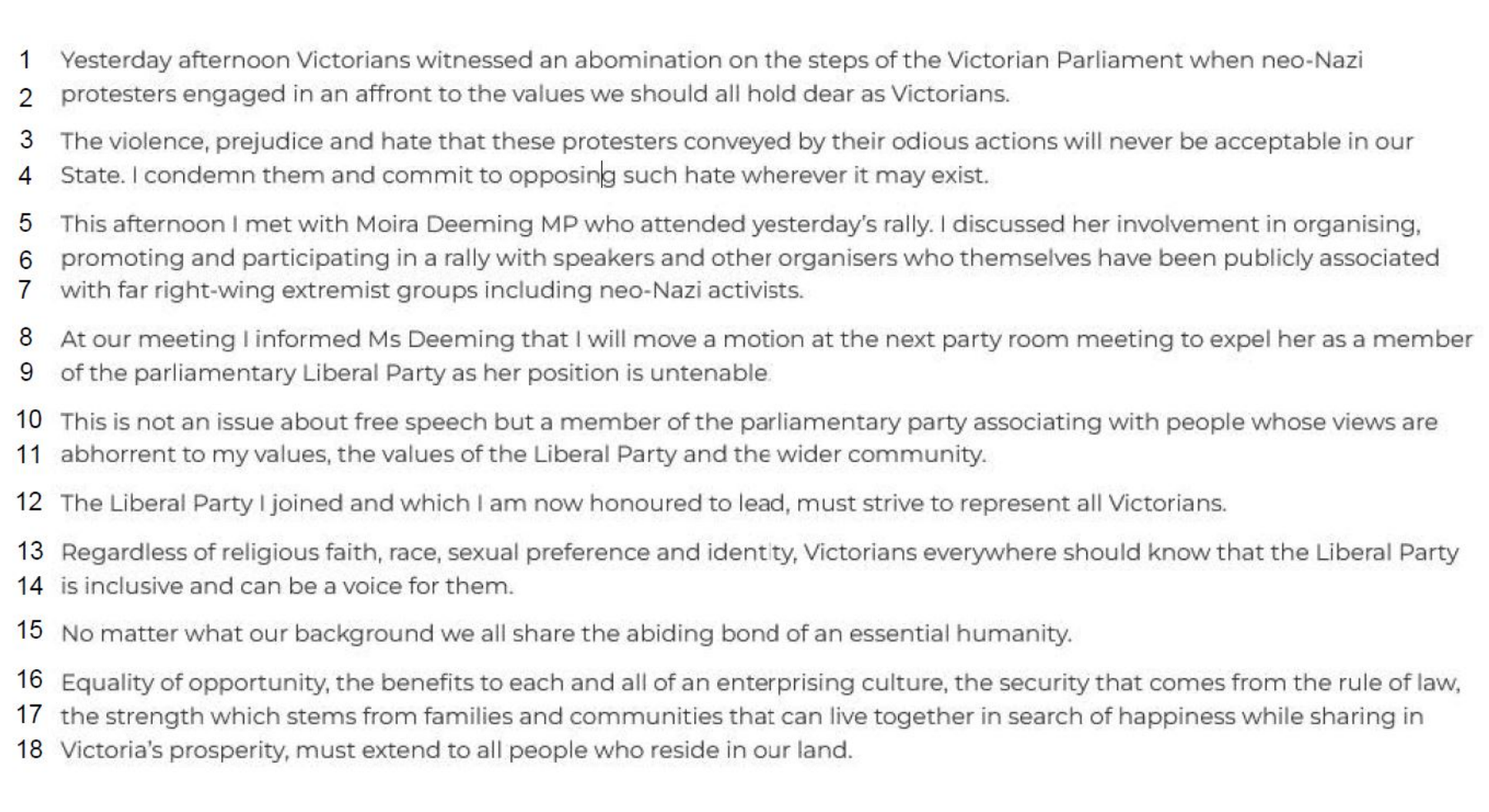
The media release

218 At 8.42pm, a **media release** was sent by email (Ex A159; CC:330) to approximately 767 journalists and others with an interest in receiving media releases from the office of the Leader of the Opposition (Court Book Part A – Pleadings and Publications (**CA**):3, 94[3.5(iii)]).

219 The media release is the first impugned publication in this proceeding.

220 It was also uploaded to Mr Pesutto's own website and the website of the Victorian Liberal Party.

221 It was headed "Statement from the Leader of the Opposition" and was in these terms (line numbers added):



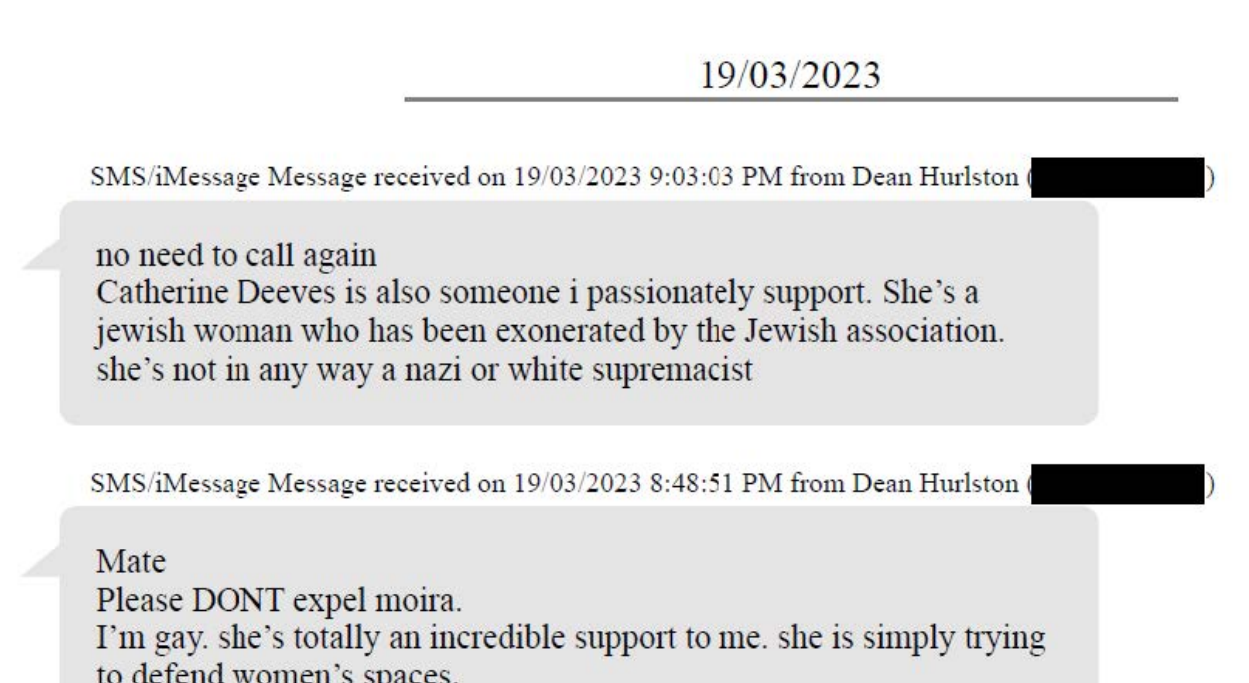
1 Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi
2 protesters engaged in an affront to the values we should all hold dear as Victorians.
3 The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our
4 State. I condemn them and commit to opposing such hate wherever it may exist.
5 This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising,
6 promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated
7 with far right-wing extremist groups including neo-Nazi activists.
8 At our meeting I informed Ms Deeming that I will move a motion at the next party room meeting to expel her as a member
9 of the parliamentary Liberal Party as her position is untenable.
10 This is not an issue about free speech but a member of the parliamentary party associating with people whose views are
11 abhorrent to my values, the values of the Liberal Party and the wider community.
12 The Liberal Party I joined and which I am now honoured to lead, must strive to represent all Victorians.
13 Regardless of religious faith, race, sexual preference and identity, Victorians everywhere should know that the Liberal Party
14 is inclusive and can be a voice for them.
15 No matter what our background we all share the abiding bond of an essential humanity.
16 Equality of opportunity, the benefits to each and all of an enterprising culture, the security that comes from the rule of law,
17 the strength which stems from families and communities that can live together in search of happiness while sharing in
18 Victoria's prosperity, must extend to all people who reside in our land.

222 The media release received 28 unique views on Mr Pesutto's website (CA:3, 94[3.5(i)]), and 26 unique views on the Victorian Liberal Party website (CA:3, 94[3.5(ii)]).

223 At 8.43pm, Mr Pintos-Lopez sent a slightly updated version of his research document set out above at [215], adding the Jones tweet and the champagne video, to Mr Johnston, copying Mr Pesutto and noting that it was for printing for Mr Pesutto (Ex R78; CC:331). It was now headed "MOIRA DEEMING FACT SHEET" and included the following additional section:

> **B. Video with Keen, Deeves** [sic] **and Angie Jones.**
>
> 4 On 18 March 2023, Deeming met with and made a video with Keen, Katherine Deeves, and Angie Jones.
>
> 5. At 4.41pm, Angie Jones tweeted: "Nazis and women want to get rid of paedo filth. Why don't you?"

224 At few minutes later, a Mr Dean Hurlston sent the following messages to Mr Pesutto (Ex A160; CC:332):



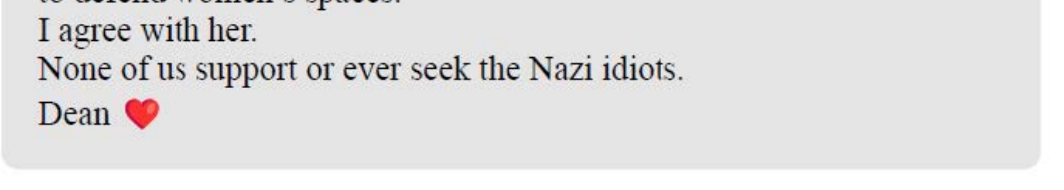
19/03/2023

SMS/iMessage Message received on 19/03/2023 9:03:03 PM from Dean Hurlston ([redacted])

no need to call again
Catherine Deeves is also someone i passionately support. She's a
jewish woman who has been exonerated by the Jewish association.
she's not in any way a nazi or white supremacist

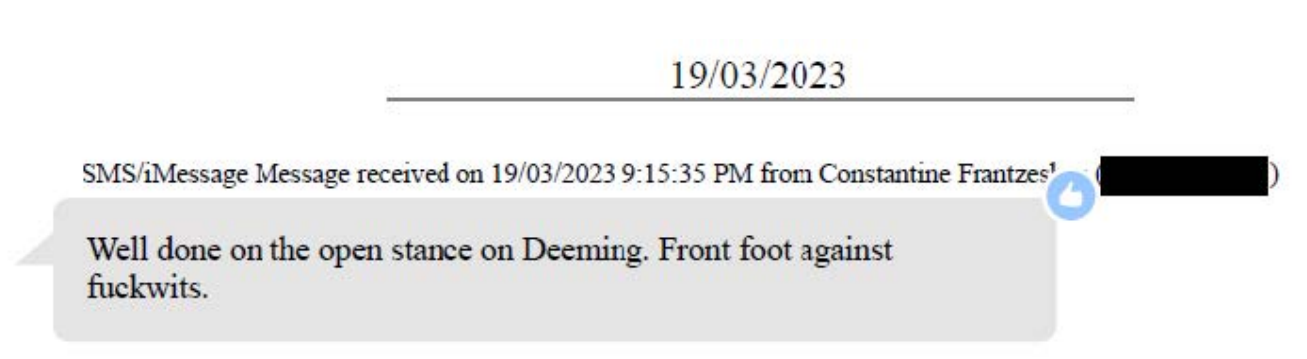
SMS/iMessage Message received on 19/03/2023 8:48:51 PM from Dean Hurlston ([redacted])

Mate
Please DONT expel moira.
I'm gay. she's totally an incredible support to me. she is simply trying
to defend women's spaces.



I agree with her.
None of us support or ever seek the Nazi idiots.
Dean ❤

225 At 9.15pm, a Mr Constantine Frantzeskos sent Mr Pesutto a text which Mr Pesutto "liked" with a thumbs up (Ex A61; CC:335):



19/03/2023

SMS/iMessage Message received on 19/03/2023 9:15:35 PM from Constantine Frantzes ([redacted])

Well done on the open stance on Deeming. Front foot against fuckwits.

226 Later that evening, having read an online article in *The Age* about the issue, Senator Henderson sent Mr Pesutto the following message via WhatsApp (CB:11, 190[17]; CC:340):

> I have just read your statement John. I have not spoken to Moira but I did see her tweet when she made clear that this protest was hijacked by these extremists. You may have more information than is available publicly, but prima facie this does not look good in my humble opinion. John I don't share all of Moira's views as you would probably know but we are a broad church ... surely it would have been better to announce an internal investigation which would have given Moira the opportunity to get proper advice, and more time for you and the broader party to consider the ramifications in the cold light of day.

227 Mr Mitch Clark of *The Australian* posted a tweet including a screenshot of the first four paragraphs of the media release (lines 1–9) at 8.44pm (Ex A260), adding "Opposition leader John Pesutto says he will move a motion at the next party room to expel Moira Deeming as a member of the parliamentary Liberal Party. He says her position is 'untenable'". The tweet had 15,300 views.

228 Ms Lana Murphy of *Nine News Melbourne* posted a tweet at 8.47pm (Ex A261) which quoted lines 5–11 of the media release. It had 26,900 views.

229 Ms Annika Smethurst of *The Age* tweeted two screenshots showing the whole of the media release at 8.48pm (Ex A262). It had 248,000 views.

230 Ms Sumeyya Ilanbey of *The Age* and *The Sydney Morning Herald* tweeted the first four paragraphs of the media release at 8.49pm (Ex A263). It had 173,000 views.

231 The whole of the media release was also republished in tweets published by: Mr Simon Love of *Sky News Australia* at 8.55pm (Ex A264) (6,393 views); Ms Sharnelle Vella of *7 News Melbourne* at 9.13pm (Ex A286) (37,700 views); and Mr Richard Willingham of *ABC News* at 9.40pm (Ex A267) (11,200 views).

232 An article by Ms Ilanbey published by *The Age* at 8.55pm on 19 March 2023, entitled "Liberals move to expel Moira Deeming over neo-Nazi rally links" (Ex R63; CC:407) also repeated extracts from the media release.

233 It was not disputed that the reports published in those articles were the natural and probable consequence of Mr Pesutto's publication of the media release. See also the Statement of Agreed Facts (**SOAF**) at [10] (Court Book Part D – Timetable, Agreed Facts, Objections, Submissions (**CD**):2, 4–5).

Media about the LWS rally and Mrs Deeming on 18 and 19 March 2023

18 March

234 By the afternoon of 18 March, Ms Keen, the LWS rallies in cities other than Melbourne and the neo-Nazis were the subject of media reporting, including:

(a) an article published in *Out in Perth* entitled "Kellie-Jay Keen event attracts supporters making Nazi salutes" (Ex R198);

(b) by 4.06pm *The Australian* and *news.com.au* had published an article entitled "Anti-trans speaker's fans throw Nazi salute amid counter-protest" (Ex R27; Ex R189);

(c) an article published in *SBS News* entitled "Nazi salutes performed on steps of Victorian parliament as protesters clash over trans rights" (Ex R193);

(d) an article published in *Pink News* entitled "Anti-trans Posie Parker supporters give Nazi salutes and chant 'white power'" (Ex R193);

(e) an article published in *Q News* entitled "Australia 2023: NAZIs join TERFs on city streets" (Ex R194);

(f) an article published in *Yahoo! News* entitled "Disturbing scenes as neo-Nazis and protestors clash in Melbourne" (Ex R196);

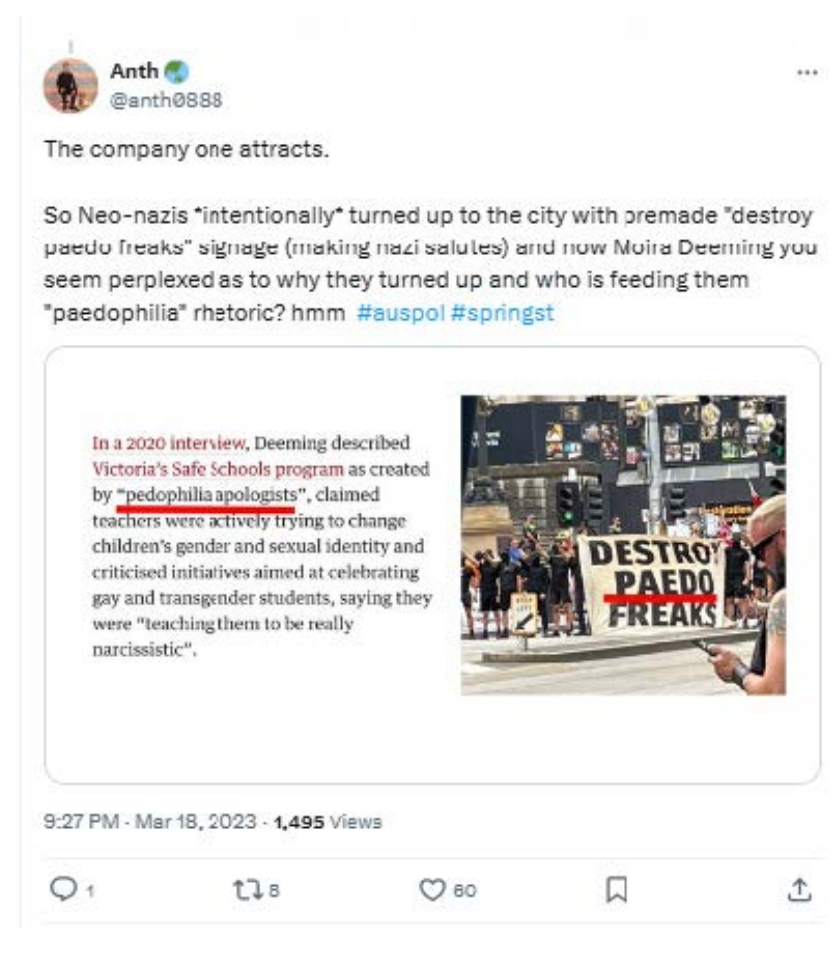
(g) an article published in *Daily Mail Australia* entitled "Dramatic scenes as anti-trans protestors throw Nazi salutes at LGBTQI activists as 'transphobe' UK speaker continues her controversial tour of Australia" (Ex R197); and

(h) an article published in *XYZ News* entitled "Australia says no to groomers" (Ex R28).

235 None of these articles named Mrs Deeming. (The article in Ex R27 contains a picture of Mrs Deeming with Ms Keen, but it does not name her.)

236 Mr Pesutto also relied on two tweets posted on Twitter calling for Mrs Deeming's expulsion, one of which referred to Mrs Deeming having "attended a far right anti-trans rally today attended by a large group of black shirted neo-nazis" (Ex R183; Ex R420).

237 At 9.30pm on 18 March, a Twitter user posted the following (Ex R463):



Anth
@anth0888

The company one attracts.

So Neo-nazis "intentionally" turned up to the city with premade "destroy paedo freaks" signage (making nazi salutes) and now Moira Deeming you seem perplexed as to why they turned up and who is feeding them "paedophilia" rhetoric? hmm #auspol #springst

In a 2020 interview, Deeming described Victoria's Safe Schools program as created by "pedophilia apologists", claimed teachers were actively trying to change children's gender and sexual identity and criticised initiatives aimed at celebrating gay and transgender students, saying they were "teaching them to be really narcissistic".

9:27 PM · Mar 18, 2023 · 1,495 Views

238 At some unknown time that day, Mr Sewell said on Telegram (Ex R190), "Today in Melbourne, the National Socialist Network acted as a vanguard for a protest against the constant paedophilic agenda being forced upon our children and our people. Paedophiles deserve destruction, and the only solution to this sickness is White Revolution! DESTROY PAEDOPHILE FREAKS!"

19 March

239 The 19 March edition of the *Herald Sun* repeated part of Mr Burns' statement set out at [137] above, together with a picture of Ms Keen (Ex R33).

240 At 11.40am, *The Age* published an article about the conduct of the Nazis which included reference to Mrs Deeming and her 18 March tweet and quotes from the joint statement by Mr Southwick and Mr Battin (Ex A64).

241 At 12.11pm, *Daily Mail Australia* published an article about the conduct of the Nazis which included a reference to Mrs Deeming and her 18 March tweet (Ex R512; CC:913).

242 By 1.37pm the Australian Broadcasting Corporation (**ABC**) website reported that "[a] group of men who gathered in support of an anti-transgender activist was seen performing Nazi salutes on the steps of Victoria's Parliament" (Ex R34). The article also reported that Mrs Deeming had been present, and that Mr Southwick had been asked questions about Mrs Deeming's attendance at it.

243 At 3.51pm, *news.com.au* published an article (Ex R520) about Mr Andrews' response to the rally, which included an image of Mrs Deeming.

244 Mrs Deeming, at 5.16pm and 5.57pm, also received emails from a Ms Joylene Dodman and a Ms Kathleen Andrews, respectively, which were critical of her attendance at the LWS rally and said among other things:

(a) "why are you associated with a person who targets one group of people based on the fact they want to live a bit different to how she thinks they should" and "you as a politician should be wary of whom you associate. Anyone associated with bigotry or racism, intolerance or inhumanity it totally lost on me".

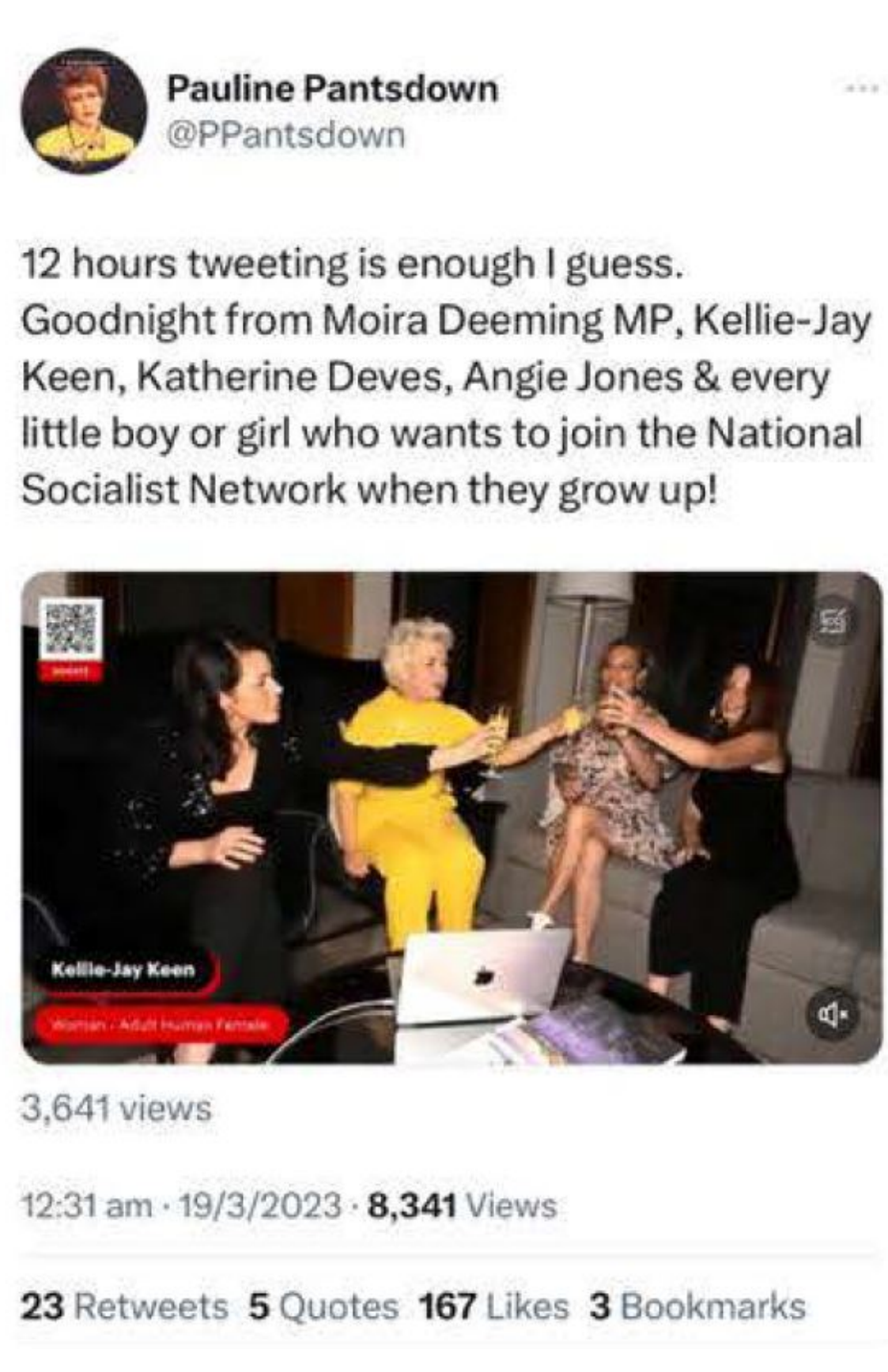
(b) "to stand with a group who publicly hate and demonstrate in support of Nazism is shameful" and "I believe you should apologise for standing with a group of Nazis and gender hating cowards, including this purported feminist".

245 At 6.00pm, *Nine News* broadcast a television report on the events of the LWS rally and Mrs Deeming's attendance (Ex R218; CC:355).

246 The report described the rally as a "far-right protest"; neo-Nazis were said to have "arrived in support of an anti-trans rights speaker"; "trans supporters" were said to have become the target; an interviewee described there being a sign "calling me a paedophile" and describing the targeting of trans people by calling for the mass murder of an entire group of people; Mrs Deeming was described as attending "the anti-trans talk" and "smiling in selfies with a controversial speaker", overlaid by a picture of Mrs Deeming and Ms Keen at the rally; and Mr Southwick commented that Mrs Deeming "has a right to her views".

20 March 2023

247 At 7.57am, Mr Woff sent what was referred to at the hearing as "the Pauline Pantsdown tweet" to two journalists (Ex A68). The Pauline Pantsdown tweet embedded an extract of the champagne video and was as follows:



Pauline Pantsdown
@PPantsdown

12 hours tweeting is enough I guess. Goodnight from Moira Deeming MP, Kellie-Jay Keen, Katherine Deves, Angie Jones & every little boy or girl who wants to join the National Socialist Network when they grow up!

3,641 views

12:31 am · 19/3/2023 · **8,341** Views

23 Retweets **5** Quotes **167** Likes **3** Bookmarks

The 3AW interview

248 At approximately 8.55am, Mr Pesutto participated in a radio interview on 3AW with Mr Neil Mitchell.

249 The **3AW interview** is the second impugned publication. A recording of the 3AW interview is Ex A19, and agreed transcript of it is Ex A20. The transcript is attached to these reasons as **annexure A**.

250 In response to a subpoena issued by Mrs Deeming, Radio 3AW Melbourne Pty Ltd produced a summary report of commercial radio survey results in Melbourne, which showed, during the relevant survey period (from Sunday 5 February 2023 to Saturday 25 February 2023 and Sunday 26 February 2023 to Saturday 1 April 2023) that the average audience of 3AW was 159,000 people for the "Breakfast" time slot and 143,000 people for Mr Mitchell's program (SOAF [19]).

251 It was also agreed that the 3AW interview was uploaded to the 3AW website on or around 20 March 2023 under the title "Liberals move to expel controversial MP over neo-Nazi rally links" at URL http://www.3aw.com.au/liberals-move-to-expel-controversial-mpover-neo-nazi-rallylinks/; that there had been approximately 205 views of it; and that it was the natural and probable consequence of Mr Pesutto's participation in the 3AW interview that it would be uploaded to the 3AW website (SOAF [20]).

252 At around 9.28am on 20 March 2023, Mrs Deeming sent a text message to Ms Annika Smethurst, a journalist at *The Age*.

The ABC interview

253 At about 9.39am, Mr Pesutto participated in an interview with ABC presenter Mr Michael Rowland, on the television programme "ABC News Breakfast".

254 The **ABC interview** is the third impugned publication. A recording of the ABC interview is Ex A21, and a transcript of it is Ex A22. The transcript is attached to these reasons as **annexure B**.

255 It was an agreed fact that the ABC interview was published by television broadcast on *ABC TV* at or about 9.39am on 20 March 2023 to viewers in Victoria, the Australian Capital Territory and the other Australian states and territories. It was part of the "ABC News Breakfast" episode on 20 March 2023, which had a combined audience of approximately 227,648 on *ABC TV* and *ABC News* (SOAF [29]).

256 It was also agreed that the ABC interview was uploaded to and available by streaming on *ABC iView* on 20 March 2023 as part of the "ABC News Breakfast" episode on 20 March 2023. The "ABC News Breakfast" episode on 20 March 2023 had an audience of 12,621 on *ABC iView* (SOAF [30]).

257 The ABC interview was also published by the ABC on radio. In response to a subpoena issued by Mrs Deeming, the ABC produced an Excel spreadsheet which showed that the average audience across every Monday during Surveys 2 and 3 in 2023 (Survey 2 being the periods from 5 February 2023 to 25 February 2023 and 26 February 2023 to 1 April 2023, and Survey 3 being the periods from 26 February 2023 to 1 April 2023 and 16 April 2023 to 20 May 2023) was 20,942 people (SOAF [31]).

258 It was an agreed fact that in publishing the ABC interview, Mr Pesutto intended and authorised and it was the natural and probable consequence of his publication that the ABC would publish or republish the sense and substance of the ABC interview on its various media platforms (SOAF [32]).

259 It was also agreed that the ABC interview was uploaded on or around 20 March 2023 to the ABC website including under the title "VIDEO: Victorian Opposition Leader moves to expel MP over antitrans protest attended by neo-Nazis" at URL https://www.abc.net.au/news/2023-03-20/victorian-opposition-leader-toexpel-mp-over-anti-trans-protest/102118582; and as part of an article titled "Victorian government moves to ban Nazi salute as Liberals move to expel MP Moira Deeming over anti-trans rally" at URL https://www.abc.net.au/news/2023-03-19/victorian-liberals-move-to-expelmpwho-attended-rally/102117788, where it is still available online for download (SOAF [33]).

260 There have been approximately 364 page views of the first URL and 134,954 page views of the second URL in Australia (SOAF [34]. The reference there to "paragraph 99" above is obviously meant to be a reference to paragraph 33 above).

261 It was an agreed fact that reports referring to parts of the contents of the ABC interview were published in at least the following articles (SOAF [35]):

(a) article published on 20 March 2023 by *The Epoch Times*, entitled "Victorian MP to be Expelled For Attending Women's Rights Rally Against Transgender in Sports" (CBE:6.15, 1);

(b) article published on 21 March 2023 by *Politicom*, entitled "Lib MP published for LGBTQ pushback" (CBE:6.15, 12);

(c) article published on 28 March 2023 by *Daily Mail Australia*, entitled "EXCLUSIVE: Inside the betrayal that drove Moira Deeming to fight for the protection of women's rights – and why the suspended MP will NEVER be silenced" (with approximately 9,678 views) (CBE:6.15, 16).

262 It was also an agreed fact that the reports published in those articles were the natural and probable consequence of Mr Pesutto's publication of the words he spoke in the ABC interview (SOAF [36]. Again, the reference there to "paragraph 102 above" is obviously meant to be immediately preceding paragraph 35).

The press conference

263 At 11am, Mr Pesutto attended a Shadow Cabinet meeting.

264 After the Shadow Cabinet meeting, Mr Pesutto conducted a press conference (for 34 minutes) accompanied by Mr Southwick, Ms Crozier and Dr Bach.

265 The **press conference** is the fourth impugned publication. It was televised live and livestreamed. An audio recording of the press conference is at CA:13. A transcript of it is Ex A24 and is attached to these reasons as **annexure C**.

266 It was an agreed fact that Mr Pesutto published the words he spoke in the course of the press conference with the intention and knowledge that they would be republished by the media to people in Victoria and the other states and territories in Australia, and that such republications were the natural and probable consequence of his convening of it (SOAF [44]).

267 It was an agreed fact that reports referring to the words spoken by Mr Pesutto in the course of the press conference were published in at least the following articles (SOAF [45]):

(a) article published on 20 March 2023 by the *Australian Financial Review*, entitled "Liberal MP's position 'untenable' after Nazi rally" (CBE:6.16, 1);

(b) article published on 20 March 2023 by *The Age*, entitled "Deeming vows to fight move to expel her from party room" (CBE:6.16, 6);

(c) article published on 20 March 2023 by *SBS News*, entitled "Victorian MP intends to fight expulsion as party leader 'satisfied' MP knew of rally's Nazi links" (with approximately 7,567 views) (CBE:6.16, 11);

(d) article published on 20 March 2023 by the *Canberra Times*, entitled "Vic Lib leader 'satisfied' MP knew rally's Nazi links" (CBE:6.16, 17);

(e) article published on 20 March 2023 by *The Guardian*, entitled "Moira Deeming vows to fight expulsion push over involvement in protest attended by neo-Nazis" (with approximately 73,158 views) (CBE:6.16, 25);

(f) article published on 20 March 2023 by the *Star Observer*, entitled "Liberal MP Moira Deeming Faces Expulsion For Attending Melbourne Anti-Trans Rally" (CBE:6.16, 32);

(g) article published on 20 March 2023 by *Sky News*, entitled "Victorian Liberal leader moves to expel MP Moira Deeming over alleged links to far right groups during heated anti-trans protest" (CBE:6.16, 39);

(h) article published on 21 March 2023 by *The Age*, entitled "Dumping Deeming to be big test for Pesutto";

(i) article published on 21 March 2023 in the *Bendigo Advertiser*, entitled "Nazi salute to be banned in Victoria";

(j) article published on 21 March 2023 by *Warrnambool Standard*, entitled "Nazi salute to be banned in Victoria";

(k) article published on 21 March 2023 by the *Herald Sun*, entitled "Risky bid to expel sitting MP – Opposition leadership on the line";

(l) article published on 25 March 2023 by *The Guardian*, entitled "The Moira Deeming question: Victorian Liberals are at war, but leader John Pesutto knows the party must change" (with approximately 17,335 views) (CBE:6.16, 40).

The expulsion motion and dossier

268 At 11.17am, Mr Glenn Corey (a policy advisor in Mr Pesutto's office) emailed to Mr Pintos-Lopez and Mr Johnston an updated 26-page version of the research document (Ex A168), which relevantly contained Mrs Deeming's 18 March tweet, the context of the Jones tweet and the full text of the article in *Pink News* entitled "Gender-critical feminist Posie Parker in video with white nationalist YouTuber – and a lot of Mumsnet users are fine with it" cited at footnote 1 (see [215] above), which I will refer to as the **Pink News article**.

269 At 12.05pm a further version of the research document was distributed by Mr Corey to Mr Pintos-Lopez, Mr Johnston and Mr Woff (Ex A169). It was now 33 pages long. Mr Pintos-Lopez then met with Mr Pesutto and they went through this version together (T785.42–788.20; T1261.1–22).

270 This version also included the full text of the Pink News article. It is as follows:

> Posie Parker, one of the UK's most prominent "gender-critical feminists" has appeared in what Mumsnet users are calling a "brave", "interesting" and "brilliant" video with a French-Canadian white nationalist.
>
> Jean-François Gariépy, 35, is a prominent far-right YouTuber who calls for a "white ethno-state" and has made videos with neo-Nazi Richard Spencer, the white supremacist who shouted "Hail Trump!" in front of a crowd seen celebrating Trump's 2016 election win with Nazi salutes.
>
> In videos attempting to prove white superiority and calling for all-white separatist states and a crackdown on immigration, Gariépy's guests have included former Ku Klux Klan leader David Duke and known neo-Nazi Mark Collett. During his livestream with Gariépy, Duke made several anti-Semitic comments.
>
> Gariépy's latest guest was Posie Parker, also known as Kellie-Jay Keen-Minshull – one of the most prominent voices of the UK's "gender-critical feminism" (or "terf") movement.
>
> Despite his well-known white nationalist views – plus court documents uncovered by the *Daily Beast* that reveal Gariépy has been accused of "luring and attempting to impregnate a developmentally disabled Hispanic teenager while lawyers contested his U.S. immigration status" – women on UK parenting forum Mumsnet, the home of much "gender-critical feminist" conversation online, praised Parker for appearing on his YouTube channel.
>
> "'Far-right' always gets thrown around as an insult," one Mumsnet user said. "Where are the left on this issue? Throwing women and children under the bus is where."
>
> "If there's anyone who can confidently debate with anti-feminist right wingers it's Posie. It's a really brave and interesting way to go," one Mumsnet user wrote.
>
> "Posie is bringing the truth about genderism to a wider audience," another said, adding that "even if it might be an audience of people we don't particularly like – presumably they still have the right to protect their kids."
>
> Some Mumsnet users, however, did not agree with Parker appearing in the video.
>
> One acknowledged the optics of "gender-critical feminists" engaging with known white nationalists. "I think it's an interesting tactic that will unfortunately feed into the hands of ppl saying (incorrectly) that all radfems are buddies with Nazis," CarWreck posted, adding, "but it's better than 'no debate'."
>
> "This is such a massive issue that I'm glad there are some GC [gender critical] women who'll talk to pretty much anyone," one user wrote.
>
> Another said, "I think it's interesting to see Posie engage with anti-feminists on the right. She pokes and prods over a shared opposition to extremist genderism."
>
> The 80-minute video, entitled "Being Female with Posie Parker", has so far been watched fewer than 5,000 times.
>
> On 11 October, popular butter spread, Flora, became the latest brand to cut ties with Mumsnet due to it spreading "transphobic" content.
>
> To the surprise of no one, Mumsnet mums are boycotting Flora in response.
>
> Parker told PinkNews that she was asked to go on the show by Gariépy's assistant, and that she gave his channel a cursory look and "nothing at the time stood out as anything unusual or problematic".
>
> She added: "I make it my business to avoid researching or policing the entire spectrum of someone's views, I think the mutilation of healthy children's bodies is too important, and so it's not usual for me to do an FBI style background check.
>
> "I am, of course, concerned at the accusations I have heard since recording the show. The misogyny was not something that surprised me, it is very much at home in both the left and the right of politics, whether it be the enforcement of traditional roles through to pretending we don't know what a woman is.
>
> "White supremacy and the racism that fuels it has no place in a civilised society, I abhor those views and the people that hold them. As a free speech advocate I think dialogue, even with those with the most odious prejudices, is essential. How are we ever to change or challenge them if we don't engage?
>
> These days so many people are called Nazis and far right that the prophetic warning that we will no longer recognise the real ones is beginning to come true."
>
> Mumsnet founder Justine Roberts said: "Mumsnet users in this discussion are near-unanimous in their dismissal of the host as a 'white supremacist asshole'".

271 At 12.10pm and 12.12pm Mr Woff sent a link of the champagne video to journalists (Ex A67; Ex A68). Each of those journalists responded and requested links to videos of Ms Keen with Nazis.

272 At 1.42 pm Mr Pesutto drafted a cover email to party members about his proposal to expel Mrs Deeming (Ex A172).

273 At 3.56pm, a further draft of the research document was sent from Mr Corey to Ms Chantalle Asmar (then Mr Pesutto's deputy chief of staff), Mr Pintos-Lopez, Mr Johnston and Mr Southwick (Ex A175). It was now described as the "Annexure to Motion of Expulsion" and had been reduced in length to 12 pages. It included a screenshot of only the first page of the Pink News article, ending at the paragraph beginning "'Far-right' always gets thrown around as an insult…", with the remaining text set out above excluded. A hyperlink to the article's webpage was included below the screenshot of the first page.

274 At some stage on 20 March, Mr Wells called Mrs Deeming (CB:1, 26[133]). Mrs Deeming gave (unchallenged) evidence that during this call, Mr Wells asked he whether it was true that she associated with Nazis and had organised the neo-Nazis to attend the LWS rally.

275 At 4.27pm, Mrs Deeming issued a statement on Facebook (Ex R39), as follows:

> PRESS RELEASE
>
> MOIRA DEEMING
>
> LIBERAL MP-WESTERN METROPOLITAN REGION
>
> Personal statement:
>
> I have been informed that there will be a vote in the Liberal Party room to determine whether I should be allowed to remain or be expelled from the Parliamentary Party.
>
> Let me clear [sic] – I have done nothing wrong. Those who organised the Let Women Speak event on the weekend have done nothing wrong.
>
> Despite this, a select few members of the Liberal leadership team have condemned me unjustly.
>
> This is an inflection point for the Liberal Party in Victoria. There are two paths the Party must choose from.
>
> Does it accept the utterly false premise that anyone who chooses to speak out reasonably, constructively, and legally is somehow an endorsement for anyone at all who happens to show up at a public event? Are we truly suggesting that we let Daniel Andrews decide the rules about who is attached to and responsible for who? This from a Premier whose own Party was found to have rorted the tax payer over the scandalous red shirts affair and yet apparently has nothing to do with it and bears no responsibility or accountability for it.
>
> Or will the Liberal Party choose this moment to draw a line in the sand and stand on our principles. I believe that Victorians want us as Liberals to stand up to the bullying from Daniel Andrews. They've had enough of the spin and the slander. And enough of women and girls being silenced about the extraordinary challenges we face.
>
> My intention is to fight and to remain a member of the team. I hope that my colleagues draw the line and say enough, and that I am able to fight alongside them. I hope that when I have the opportunity to present the facts as they occurred, that my colleagues will stand on principle and vote down the motion to have me expelled.
>
> Background statement:
>
> On Saturday 18th of March, I attended the 'Let Women Speak' event hosted by 'Standing For Women UK' (SFW).
>
> SFW advocates for the reinstatement of reasonable biological-sex based rights and against the irreversible and harmful medical transitioning practices used on gender non-conforming, autistic and gay minors.
>
> This organisation and its goals are mainstream and global, supported by high profile members and leaders of every mainstream political party in the world.
>
> The Melbourne "Let Women Speak" event was attended by Muslims, Christians, Atheists and members of the Greens, Labor, LDP and Liberal Parties. I announced on International Women's Day, in Parliament that I'd be in attendance and invited Natalie Hutchins to join me, because she is the Minister for Women.
>
> Due to threats of violence from extreme left activists including the notorious Antifa, I was approached and asked if I could drive international speaker Kelly Jay and her security guards to park in Parliament House car park, for safer passage to and from the Parliament House steps. I sought and gained permission from Parliament services to do so.
>
> The event was very ably organised by Angela Jones, a left-wing, pro-gay rights Jewish woman, who liaised with Victoria Police to arrange a buffer zone between her event and any counter protestors.
>
> This is why I and the other attendees were horrified to see masked men all clad in black inside the buffer zone. We thought that we were going to be attacked. However, the police did not seem worried and were talking with them over at the edge of the line.
>
> Later I saw the police seemingly usher these men right through the centre of the buffer zone in between our event and the counter protestors, which is when I saw those men raise their hands in a Hitler salute.
>
> I, along with the few others who were facing them from the front were horrified, but relieved that the police were moving them on.
>
> After the event I was informed that these masked men had in fact mounted Parliament House steps outside of our view on the other end and performed a Nazi salute, and that members of the SFW group asked the police to make them leave, but were informed that the Police had no powers to move them on due to Labor's removal of those powers.
>
> The Let Women Speak event saw several women injured by the extreme left counter protestors who infiltrated the event. I was assaulted and injured, along with multiple other women, including one who was taken to hospital after being knocked unconscious. They also became violent with police and punched police horses, forcing the event to finish early. I condemn their actions, and call on others to condemn this violence against peaceful women.
>
> I also condemn of the actions of the masked men in black who were later identified as Neo-Nazis, who gate-crashed the Let Women Speak event. Most of the LWS supporters did not realise who they were until they were being escorted out by Victoria Police, when they did the despicable Nazi salute.
>
> I completely reject the beliefs of National Socialists (Nazis) and I have seen first-hand the impact that the Holocaust had on a family member.
>
> None of those organising the event had any involvement with these men, as has been confirmed by Victoria Police, the Australian Jewish Association and all the organisers themselves.
>
> If Daniel Andrews had not repealed the 'move on' laws, they could have been removed. The 'move on' laws need to be strengthened and I also welcome moves to ban the Nazi salute.
>
> And I hope that the concerns of women and girls will finally be deemed worthy of attention.

276 Mrs Deeming published the same statement on Twitter shortly thereafter (Ex A273).

277 At 4.30pm, a draft expulsion letter addressed to Mrs Deeming with an annexure was emailed by Ms Asmar to Mr Pesutto, Mr Southwick, Ms Crozier and Dr Bach for consideration (Ex A272). The letter included an annexure which was substantially in the same form as the "Annexure to Motion of Expulsion" distributed at 3.56pm (see [273] above).

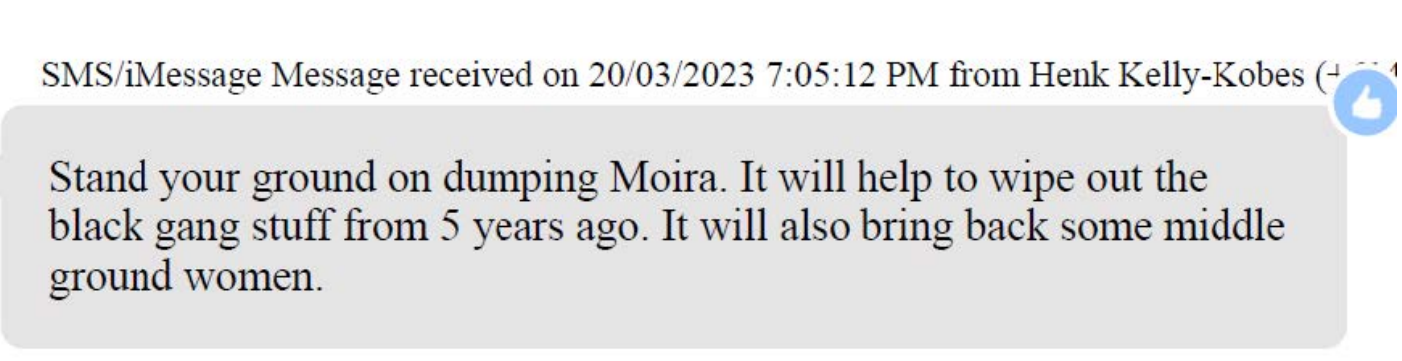
278 The expulsion letter and annexure, which was referred to as the **expulsion motion and dossier** or **EMD**, was emailed to Mrs Deeming at 5.42pm (Ex A176) and to the other MPs in the party room at 6.01pm (Ex R224).

279 The EMD is the fifth impugned publication. It is attached to these reasons as **annexure D**.

280 Between 6 and 7pm, Mr Pesutto attended the studios of *Sky News* and participated in a television interview with presenter and journalist Ms Peta Credlin AO, in which she asked him about the expulsion motion. The audio-visual recording of the interview is Ex A29.

281 At approximately 7pm, Mr Sewell participated in an interview on Odysee.com (Ex R525).

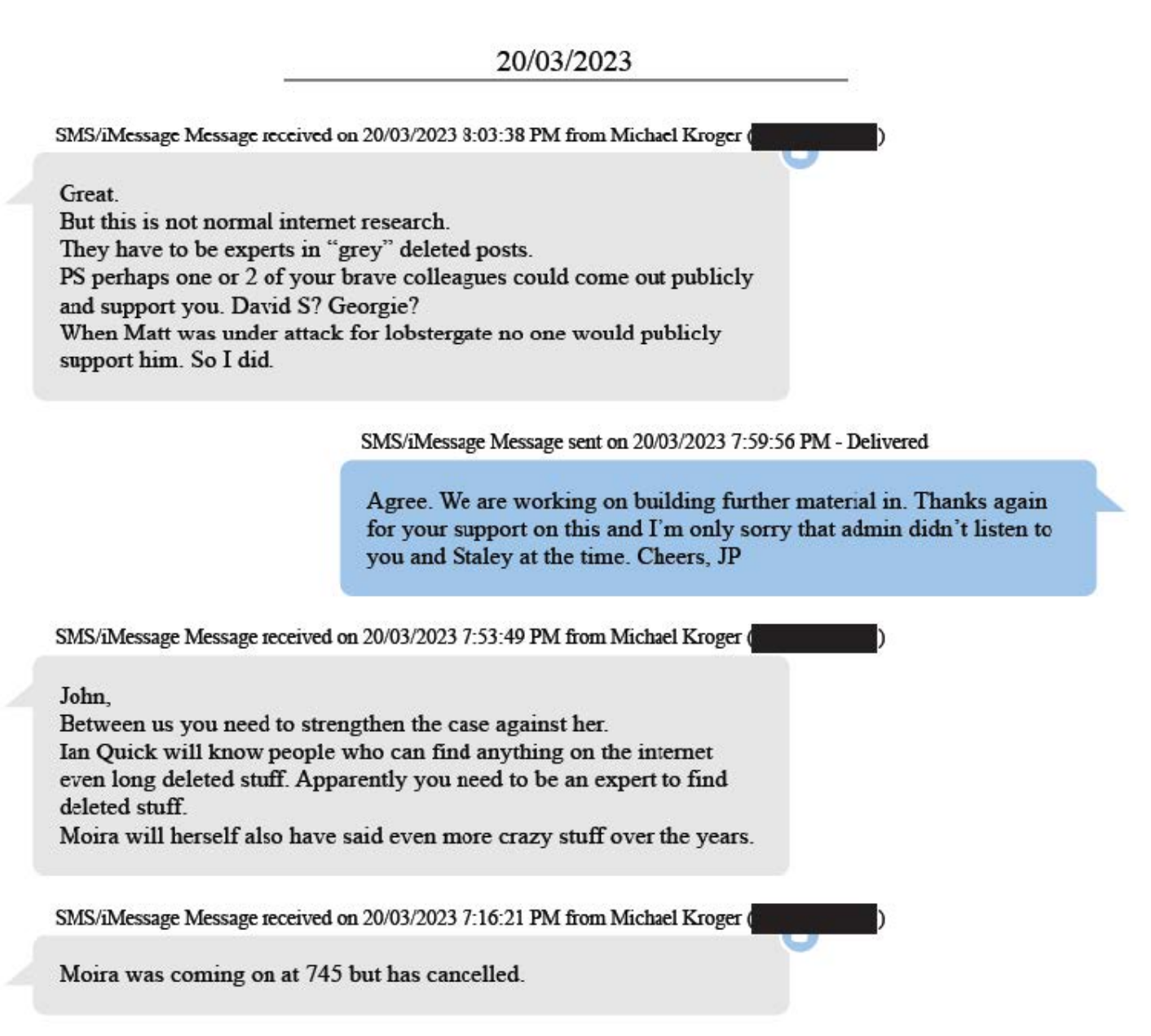
282 At 7.05pm, Mr Henk Kelly-Kobes, who was the owner and proprietor of two Dymocks book stores in Mr Pesutto's electorate and president of the Camberwell Traders Association, sent Mr Pesutto a message which Mr Pesutto 'liked' by giving it a thumbs up (Ex A33):



SMS/iMessage Message received on 20/03/2023 7:05:12 PM from Henk Kelly-Kobes (

Stand your ground on dumping Moira. It will help to wipe out the black gang stuff from 5 years ago. It will also bring back some middle ground women.

283 Between 7.16pm and 8.03pm Mr Kroger and Mr Pesutto exchanged the following text messages (Ex A41):



20/03/2023

SMS/iMessage Message received on 20/03/2023 8:03:38 PM from Michael Kroger ([redacted])

Great.
But this is not normal internet research.
They have to be experts in "grey" deleted posts.
PS perhaps one or 2 of your brave colleagues could come out publicly and support you. David S? Georgie?
When Matt was under attack for lobstergate no one would publicly support him. So I did.

SMS/iMessage Message sent on 20/03/2023 7:59:56 PM - Delivered

Agree. We are working on building further material in. Thanks again for your support on this and I'm only sorry that admin didn't listen to you and Staley at the time. Cheers, JP

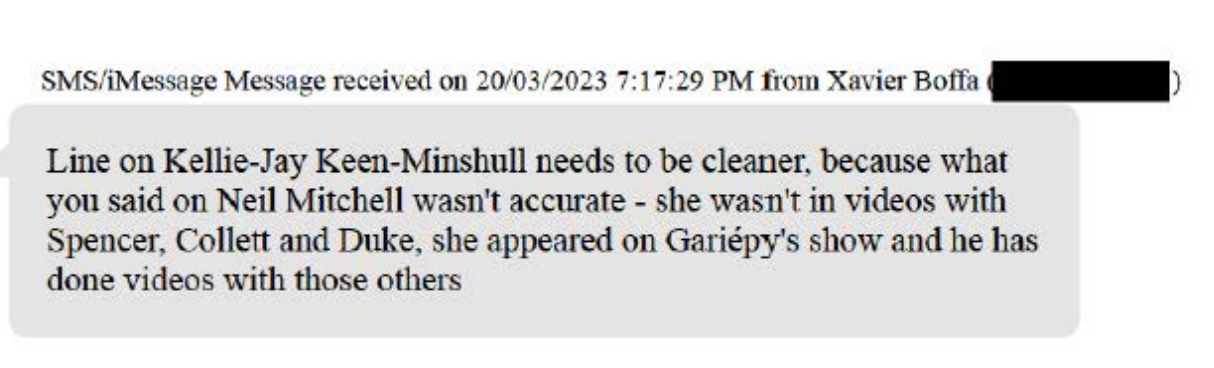
SMS/iMessage Message received on 20/03/2023 7:53:49 PM from Michael Kroger ([redacted])

John,
Between us you need to strengthen the case against her.
Ian Quick will know people who can find anything on the internet even long deleted stuff. Apparently you need to be an expert to find deleted stuff.
Moira will herself also have said even more crazy stuff over the years.

SMS/iMessage Message received on 20/03/2023 7:16:21 PM from Michael Kroger ([redacted])

Moira was coming on at 745 but has cancelled.

284 At 7.17pm, Mr Xavier Boffa, who was a member of Mr Pesutto's staff, sent the following text message to Mr Pesutto suggesting that something he had said in the 3AW interview was not accurate (Ex R226):



SMS/iMessage Message received on 20/03/2023 7:17:29 PM from Xavier Boffa ([redacted])

Line on Kellie-Jay Keen-Minshull needs to be cleaner, because what you said on Neil Mitchell wasn't accurate - she wasn't in videos with Spencer, Collett and Duke, she appeared on Gariépy's show and he has done videos with those others

285 At approximately 8.22pm on 20 March 2023, Mrs Deeming sent a text message to Ms Credlin about the EMD, saying "I'll send you the 'evidence brief' if you like. It's pathetic". Ms Credlin replied "I have it" (Ex R176).

286 At 8.44pm, *The Age* published an article entitled "Deeming vows to fight move to expel her from party room" (Ex A177).

287 It read in part:

> The party's leadership team has compiled a dossier on Deeming that they believe will convince the undecided Liberals to expel the upper house MP when the vote takes place next Monday. Pesutto said the party needed to "take these strong, decisive steps to show that we will never support and that we will always oppose anything that is hateful or liable to incite".
>
> …
>
> Pesutto moved against Deeming for promoting the event and attending a post-rally karaoke night with the organiser, who, he argues, has shared platforms with white supremacist. In an interview with a far-right media outlet on Sunday, Keen-Minshull threatened Pesutto with a defamation claim.

288 There is a dispute between the parties as to the significance of this article. Mrs Deeming submitted that it is significant that it referred to the "post-rally karaoke night". The reference to Mrs Deeming and others attending it was something that was only referred to in a *draft* EMD. The karaoke night never made its way into the final version of it. Mrs Deeming submitted that Mr Pesutto's explanation for having distributed the EMD to all media outlets – namely that because *The Age* had it, it would be unfair that all the other media outlets did not have it as well – was a "pretext", because he well knew that *The Age* did not in fact have a copy of the final version. That is but one example of the myriad side issues that occupied so much time at the trial.

289 I will return now to the factual chronology.

21 March 2023

290 It was an agreed fact that on 21 March 2023, Mr Pesutto's office provided a copy of the EMD to *The Australian* and the *Herald Sun* and other media outlets (SOAF [54]).

291 It was also agreed that the EMD was published on or via the websites of *The Australian* and the *Herald Sun*, and that it is still available for download through those newspapers' websites from two specified URLs (SOAF [55]).

292 It was a further agreed fact that reports referring to parts of the contents of the EMD were published in at least the following articles (SOAF [56]):

(a) article published on 21 March 2023 by the *Herald Sun*, entitled "Libs vote as John Pesutto releases dossier on Liberal MP Moira Deeming following anti-trans rally" (with approximately 19,180 views) (CBE:6.17, 7);

(b) article published on 21 March 2023 by *The Guardian*, entitled "Bid to expel Moira Deeming deepens divide in Victorian Liberal party" (with approximately 27,856 views) (CBE:6.18, 1);

(c) article published on 21 March 2023 by *9News*, entitled "Victorian Liberals to push forward with a motion to expel MP Moira Deeming" (CBE:6.18, 9);

(d) article published on 21 March 2023 by *The Age*, entitled "Moira Deeming suffers blow in fight against expulsion from Liberals' party room" (CBE:6.17, 1; CBE:9.8);

(e) article published on 22 March 2023 by *The Age*, entitled "Liberals fight for Deeming reprieve as anti-trans rights saga splits party" (CBE:6.18, 15);

(f) article published on 22 March 2023 by *The Australian*, entitled "Victorian Liberal leader John Pesutto's bid to expel anti-trans MP Moira Deeming splits Libs" (with approximately 26,043 views) (CBE:6.17, 8);

(g) article published on 27 March 2023 by *The Age*, entitled "Deeming expulsion vote looks set to pass in key test for Pesutto" (CBE:6.18, 21).

293 It was also an agreed fact that Mr Pesutto knew that the reports published in those articles were likely to be the natural and probable consequence of his office providing a copy of the EMD to the media (SOAF [57]).

294 At 8.30am Mr Woff sent the EMD to many journalists via WhatsApp (Ex A181; Ex A182). Mr Johnston also sent the EMD to a journalist at the ABC via email later in the day (Ex A189).

295 At around the same time there was a Liberal party room meeting. Ms Heath's contemporaneous notes of the party meeting are Ex R228. The minutes of the meeting, as adopted by the party room on 12 May 2023, are Ex R285.

296 There is a dispute as to precisely what was said during the course of that meeting. What is not disputed, however, is that Mr Riordan moved a motion, seconded by Mr Smith, to delay voting on the motion to expel Mrs Deeming, and that that delay motion did not pass (11 votes in favour, 18 votes against and 1 abstaining).

297 Also on 21 March 2023, the *Herald Sun* published a two-page spread of articles entitled "State to outlaw Nazi Salute", "Moira Deeming is looking like Bernie Finn 2.0, and it could also be John Pesutto's make-or-break moment" and "Risky Bid to expel sitting MP – Opposition leadership on the line". Those articles are Ex A191; CC:435.

Communications to Mr Pesutto and the Liberal Party on 20 and 21 March 2023

298 After the media release was published on 19 March, Mr Pesutto received messages on 20 and 21 March from persons opposing his decision to move a motion to expel Mrs Deeming.

299 Ms Nina Vallins, who attended the LWS rally, sent an email to Mr Pesutto at 1.33am on 20 March, which said, among other things (Ex A170):

> The attempt to paint our rally as a neo-Nazi event is wrong. As a Jew and a feminist, I find it deeply offensive.
>
> You give the Nazis strength and power by saying that this was a Nazi event. There were 20 evil men there, who have all been masturbating over the media reports exaggerating their presence and impact; and you give them the extra present of they're now you blame Ms Deeming

300 Ms Lynne Robertson emailed to the Liberal Party (at 1.34am on 20 March) and Mr Pesutto the following (Ex A171):

> To the Victorian Liberal Party,
>
> You should be absolutely ashamed of your selves for even considering ejecting Moira Deeming from the party. How on earth is it her fault the Neo Nazi's turned up to the event. As much as the media (and at this point in time it appears your side of politics as well) is trying to pretend the Neo Nazi's were there to support the women standing up for their sex based rights it's too late. The Neo Nazi's already posted an article stating plainly they were there to protest both the women and the Transgender Activists. They stated plainly they were against the Let Women Speak event because Kellie J Keen is according to them an "atheist radial feminist " who supports lesbians. She isn't a radical feminist so they are totally wrong on that count, she's a women's right campaigner. It appears the Neo Nazi's and the Trans Activists have more in common with each other as they both either hate lesbians and women or at the very least want to take their rights away. . .
>
> Why would you be holding Moira Deeming accountable for the disgusting behaviour of Neo Nazi's, the police who escorted them in, and the even worse behaviour of Trans Activists who were physically assaulting women and who were punching horses. Have you gone completely mad?
>
> When will the Liberal Party of Victoria and Australia start standing up for the rights of 50% of the population that have been erased by gender identity laws. Allowing men who claim to be women into womens prisons, womens change rooms, womens sport, womens domestic violence shelters and rape crisis centres is a disgrace and a violation of women's and girls human rights.
>
> Grow some balls and stand up to the militant Transgender Lobby it's so obvious you are trying to appease. Dan Andrew's is going to rue the day he ever got into bed with the Trans Lobby.

301 Ms Clark also sent an email to Mr Pesutto (at 10.47am on 20 March) telling him that she had attended the LWS rally and that it had been "hijacked by intruders" and gave an account of events at the rally (CC:374). She also provided him with links to the videos which had been published by Ms Keen and Mr Fernando, and offered to meet with Mr Pesutto.

302 Ms Moira Chalk also attended the LWS rally. She wrote to Mr Pesutto (and to all Liberal politicians in Victoria) on 20 March at 2.38pm as follows (Ex A173):

> I am the mother of a gender distressed teenager and I attended the Let Women Speak event on Saturday. I am appalled at the ill informed and reactive response of your party leadership and the unevidenced accusation of Moira Deeming having links to an unrelated group of neo-nazi men.
>
> I am also part of a growing collective of parents, many of whom also attended on Saturday, who all have a teenage or young adult child with confusion around their gender identity. All have expressed gender distress only after reaching puberty. Most are diagnosed with neurodiversity or display neurodiverse traits. Most have experienced trauma or suffer from mental illness. All of them have our full support to express whichever sexuality they wish to.
>
> David Southwick, I live in your electorate and I voted Liberal for the first time in my life last year, because Moira Deeming was standing for the Liberal Party. I was totally disillusioned with the stance of the Labor Party on protecting single sex rights and their disregard for the rapidly growing concerns around gender healthcare, particularly for children and distressed young people like my daughter but I fear I will live to regret the decision to vote for you.
>
> I am disgusted that your party leadership and the media appear to be acting on hearsay and would be happy to expand further on my experience and observations on Saturday.
>
> I urge you all to act with intelligence and integrity and vote against any motion to expel Moira Deeming. I further urge you to advocate for the needs and rights of women alongside the needs and rights of the gender diverse, and I implore you to investigate the state of gender healthcare in Victoria.

303 Ms Dennis also attended the LWS rally. In her affidavit she deposed that on 20 March she sent an email to members of the party (CC:404), because she felt that Mr Pesutto "was telling lies or was extremely misinformed and mistaken about Mrs Deeming and about the LWS Rally" and that her "understanding was that Mr Pesutto was suggesting that Mrs Deeming had some association or connection with the Men who by that time were being reported in the press as 'Nazis'". She deposed that as she "had attended the LWS Rally, and knew the Men were unconnected with the LWS Rally, I felt compelled to raise this with Mr Pesutto … given they were going to be voting on whether to expel Moira … I wanted them to understand the facts and what had really occurred". Her email said, among other things:

> None of us had anything to do with the neo-Nazi group, the community group, or any of the other groups which showed up on the day. We were as shocked as anyone when they marched through. Yet claims are being made that the organisers, or Moira Deeming MP, were somehow connected with these Nazi elements. This is not true.
>
> Moira is a courageous MP and human being. She stands up for the rights of women and girls, and for freedom of speech. If she is exprelled [sic] from the party, because of lies and smears, I will not be voting for the Victorian Liberals in future.

304 Mr Cam Liston also attended the LWS rally. He emailed the leadership team on 21 March as follows (Ex A183):

> I am emailing to express my great disappointment in your treatment of Moira Deeming.
>
> My major gripe is that your justification for expulsion from The Liberal Party is false.
>
> I attended the 'Let Women Speak' rally on Saturday and it was clear that the National Socialist Network (Nazis) gate crashed the women's rally. There was great confusion as to who they were and by the time people realised who they were VicPol had given them a platform on the Steps of Parliament.
>
> You are factually wrong. This kind of WEAKNESS will ensure that you will be in opposition for at least the next 8 years.
>
> Show some backbone and MOST IMPORTANTLY fight for THE TRUTH.
>
> Guilt by association sends a terrible precedent.

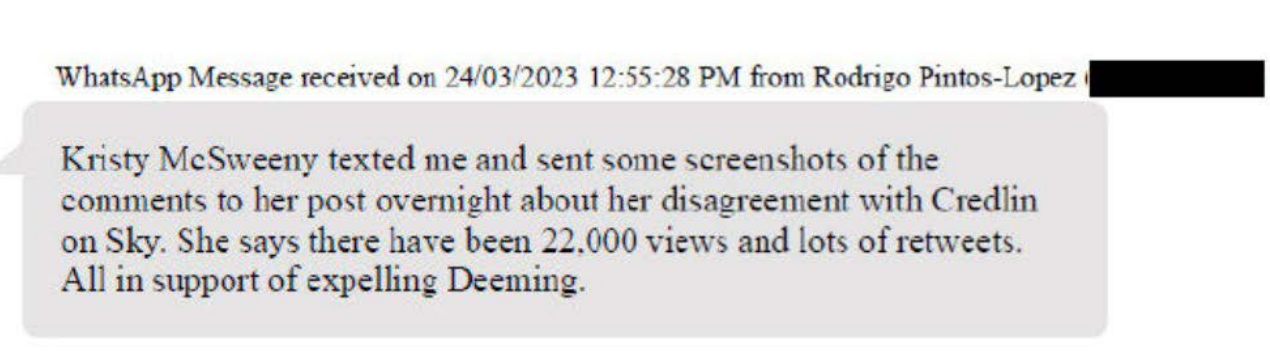
305 Ms Papadimitriou sent an email on 21 March to Ms Maree Edwards MP, the Speaker of the Victorian Legislative Assembly (CC:421), copied to Mr Pesutto. Her email read in part:

> It is absurd to suggest that the Victorian women at the event, including Moira Deeming, are somehow linked to the Nazi group. The women who peacefully attended come from a diverse range of backgrounds. Many were lesbians and parents of gender dysphoric young people.…
>
> I am a lifelong Labour[sic]/Greens supporter who supports Moira Deeming. On Saturday Moira spoke eloquently and with dignity about a muslim, migrant woman's experience of living in Australia. Moira has done nothing wrong. Using her as a scapegoat for the angry violent behaviour of random men is unjust and unfair. Do not blame this woman and sacrifice her career and livelihood …
>
> I am happy to speak with you about the issue - I am a witness to the event and the women who spoke there. I am a woman who cares about the erosion of women's rights and our voice in public life. I hope you do too.

306 Ms Oddi also sent an email to Mr Pesutto and Ms Crozier on 21 March (CC:422). She had attended the LWS rally. She described Ms Keen as "a women's rights activist" and said she "had no idea the nazis were there until I came home and saw it on the news" and that she "should not have to justify this, but I do want to say the women did not notice them".

24 March 2023

307 On 24 March, Mr Pintos-Lopez sent a WhatsApp message to the leadership team (Ex A196) about the number of people in support of expelling Mrs Deeming:



WhatsApp Message received on 24/03/2023 12:55:28 PM from Rodrigo Pintos-Lopez ([redacted]

Kristy McSweeny texted me and sent some screenshots of the comments to her post overnight about her disagreement with Credlin on Sky. She says there have been 22,000 views and lots of retweets. All in support of expelling Deeming.

26 March 2023

308 At 2.51pm, Mrs Deeming sent an email to members of the Victorian Parliamentary Liberal Party asking them to vote against the expulsion motion (Ex R41).

309 The email was as follows:

> Dear Colleagues,
>
> I respectfully write to ask that you vote against the motion to expel me from the Liberal Party Parliamentary team because I am innocent of these charges, I am a brand new MP and deserve the chance to learn from this, and because guilt by various degrees of association is not a standard that any one of us can avoid transgressing.
>
> I love the Liberal Party and I truly want to stay part of our Parliamentary team. Regardless of the outcome of this vote, I'll be keeping my Liberal Party membership and representing us in Parliament to the best of my ability.
>
> I want you all to know that I have learned many painful lessons from this experience, and that I deeply regret the trouble this has caused my state and federal colleagues and the wider party membership. And also, that my offer to publicly back the current leadership team if the vote to expel me fails, still stands.
>
> Although the vote to expel an MP should be based on facts and evidence, I do understand and lament the fact that as a Party we seem to be wedged between two very unpleasant media narratives.
>
> The first false narrative is that I or the Liberal Party are in any way, shape, or form, directly or indirectly somehow 'pro-Nazi', due to my affiliation with the "Let Women Speak" Australia campaign. This accusation is demonstrably false. It has been damaging in the extreme to my reputation and to the Liberal Party brand.
>
> The second narrative is that the Victorian Liberal Party Parliamentary team is anti-women and anti-free speech for punishing my advocacy and involvement with a legal and mainstream 'women's rights' campaign event, previously attended and supported by other senior female Coalition MPs like Senator Jacinta Price and Senator Claire Chandler.
>
> I believe that we can take control of this situation and create for ourselves, a third media narrative- one where we avoid both catastrophes and emerge united as a team around the current leadership.
>
> The fact is that the information provided to our Leadership team was poorly researched and the allegations made based on that information have been proven wrong. But that is good news for us all, because the Leadership have legitimate grounds to retract the expulsion motion.
>
> To that end, I would like to clarify for all my colleagues, the sentiments I expressed on Sunday night in my meeting with the four members of the Leadership team and Nick Johnson.
>
> 1 I condemn Nazism unreservedly, and my offer to make another public statement to that effect, workshopped with the media department and signed off on by Leadership- still stands.
>
> 2 I condemn bigotry towards the LGBTQI+ community, and especially any inferences or claims that being a part of that community implies any kind of paedophilia- and my offer to make another public statement to that effect, workshopped with the media department and signed off on by Leadership- still stands.
>
> 3 Until the meeting on Sunday night, I had never before heard allegations that 'Standing For Women' or Kelly-Jay Keen had alleged associations to any degree whatsoever, as a Nazi or a Nazi sympathiser. The quotes read to me by Nick Johnson in that meeting were a total shock. I accept that an experienced person such as Nick was able to find those accusations in "under ten minutes". For example, the main allegations came from a single article from a small left wing pro-Scottish newspaper. For my part, I had only ever known of Kelly-Jay Keen and the "Standing For Women" organisation through the lens of mainstream media interviews about them and with them, with mainstream interviewers in the UK, Canada and NZ. In Australia SFW associations were with prominent female Coalition MPs like Senator Jacinta Price and Senator Claire Chandler, and with mainstream organisations like CPAC and Women's Forum. The majority of speakers at the previous events have been left-wing middle-aged women and members of the LGBT community themselves. I maintain that I had no reasonable ability to foresee the ambush by Nazis at Parliament House that day. And my offer made on Sunday night, to have my future attendance at events vetted by Party Leadership, still stands.
>
> 4 I acknowledge that I was unwilling on Sunday night, to accept a characterisation of my video clip with Katherine Deves, Angela Jones and Kellie-Jay Keen (where we lamented the presence of those Nazi's anywhere near our group) as "having drinks with Nazis". I found the accusation deeply offensive because that is something that I would never do, as I find Nazism abhorrent on every level. But my offer to accept regular guidance on all things political, still stands.
>
> 5 I acknowledge that I am a new and inexperienced MP, and that I do not adequately understand the 'unspoken' or nuanced expectations that seem to be obvious to others- even to other new MPs. My offer to take close guidance from wiser heads on all aspects of politics into the future, still stands.
>
> 6 I acknowledge that I did not follow up on my requests made at our inaugural Coalition conference, for specific help with how to wisely manage my pursuit of fairer sex-based protections. My offer to take close guidance from 'wiser heads' on these issues into the future, still stands.
>
> 7 I acknowledge that I did not follow up on my requests, made in an Upper House Parliamentary team meeting, for written guidelines and tips for New MPs. My offer to take closer guidance from 'wiser heads' on these issues into the future, still stands.
>
> 8 I didn't realise that I was expected to directly ask Leadership for permission to go to the "Let Women Speak" rally. I had been unaware of the Leadership's desire for me to do so, because as far as I could see, this is was [sic] not common practice. However, my offer to run event attendance by 'wiser heads' on these issues into the future, still stands.
>
> 9 I acknowledge that I did not realise how strongly some Liberal MPs object to my advocacy for sex-based rights, parents rights and free speech as they relate to transgender laws. Or that they consider my views on this topic to be so politically toxic and out of step with a progressive modern-day Liberal Party, that they believed I needed to become an independent MP in order to pursue them. I had been under the impression that so long as I spoke respectfully and didn't announce policies, I was welcome to advocate on these topics. I had no idea that this was a non-negotiable issue or that the number of times that I spoke about it were being counted as 'strikes' against me (my maiden speech, IWD speech and attendance at the LWS event). If I do survive this expulsion motion, I hope that we can discuss these issues together in private so that we all have clarity and unity going forward.
>
> 10 I acknowledge that I was given the option to resign from the Parliamentary team or be put through a motion of expulsion, but that I did not give an answer that night. This is because I was under the impression that I had until Tuesday to speak with others and try to negotiate a solution. I was further advised by supporters in the party not to speak with media or make any statements until such negotiations had prevailed. Then I saw the expulsion motion announcement in the media. I tried to negotiate further under media silence, but eventually concluded that whatever else happened, I surely had the right and the responsibility to make a statement on social media condemning Nazism and explaining what really happened. I acknowledge that this move angered some of my colleagues. However, in my defence, I have never been through anything like this before, I don't know the rules, and I was unable to get help from our media department. I am truly shocked and saddened at how this situation has unfolded, not only for myself, but for the whole parliamentary team.
>
> If you have any questions or would like any assurances, please don't hesitate to ask.

310 Mrs Deeming referred in the above email to Mr Johnston being present at the 19 March meeting, but senior counsel for Mrs Deeming accepted that she had confused him for Mr Pintos-Lopez (T66.26–25).

27 March 2023

311 At 6.29am on 27 March, Mrs Deeming sent an email to members of the Victorian Parliamentary Liberal Party (Ex R42) attaching her response to the EMD that she had prepared with her former solicitors. In it she said among other things:

> 1. By letter dated 20 March 2023, I was notified of an intention to move a motion at a special meeting of the Victorian Parliamentary Liberal Party seeking to expel me from the Victorian Parliamentary Liberal Party.
>
> …
>
> 3. The proponents of the motion do not establish a purported basis to expel me from the Victorian Parliamentary Liberal Party. The allegations about Ms Keen, the "Let Women Speak" event and Ms Angie Jones are false and deliberately and selectively misleading.
>
> 4. On 18 March 2023, I attended and participated in an event held on the steps of Parliament House entitled "Let Women Speak", which was hosted by Ms Kellie-Jay Keen. This was disclosed in advance as I mentioned it in Parliament. I admit that with the benefit of hindsight of what has occurred that my participation may have been an error of judgment that resulted in unneeded scrutiny.
>
> 5. When I attended the event I made sure I did not speak as a Liberal, in fact I did not even mention I was a Liberal. My contribution was to read a letter from a Muslim friend and constituent who shared her concerns about the loss of sex-based rights from a migrant Muslim perspective.
>
> 6. Northern Territory Country Liberal Party Senator Jacinta Price addressed the same event in Queensland. Tasmainian [sic] Liberal Party Senator Claire Chandler had planned to attend the event in Canberra. The event tour was supported by CPAC a well-known and reputable organisation which is chaired by Warren Mundine AO, former Australian Labor Party national president who sought office both as a Labor Party and Liberal Party candidate. Ms Keen was interviewed by Sky News, 2GB and other news outlets in advance of this event. This event and the positions discussed at the event represent positions in the Australian mainstream and are reflective of a broad spectrum of the constituency of this state, and some of the concerns raised have been vindicated by the decision of the World Athletics Council on 24 March 2023.
>
> …
>
> 8. The false accusation that Ms Keen was known to be publicly associated with far rightwing extremist groups including neo-Nazi activists, perpetuated by far left-wing activists, if it had any credibility, would have resulted in her being denied entry to Australia and New Zealand. Ms Keen was investigated and no such basis to revoke her visa was found.
>
> 9. Ms Keen did do an interview with Jean-François Gariépy, but Ms Keen has previously addressed this stating she had no knowledge of his beliefs and if she was aware she would have challenged his beliefs directly or not appeared …
>
> 10. As to the Soldiers of Christ allegation, this was a small YouTube channel with less than 5.9 thousand subscribers. It is clear from the introduction of the video that this was not a pre-planned interview and Ms Keen had to be told who the channel was and it was described as a 'Christian channel'. The channel may or may not be far-right but Ms Keen has confirmed that she had no idea who they were. The source the proponents rely upon for this and several other allegations in support of their motion is a small left wing pro-Scottish Independence / SNP online newspaper The National, that had an obvious political agenda and bent and is not a credible source of information.
>
> 11. The allegation about Ms Keen posting a photograph with Hans Jørgen Lysglimt Johansen on the Internet is false and misrepresents the content of The National article, itself a hit piece to discredit Ms Keen …
>
> 12. The allegations about Ms Keen using a Barbie Doll wearing a Nazi uniform as her profile picture on the social media site Spinster made in The National hit piece are missing context. Ms Keen made a poor distasteful joke, which I unreservedly condemn, in an attempt to mock a far-left activist who had called her a Nazi Barbie doll. I had not heard of the social media site Spinster until this motion. It is self-evident that it is not the implication of the image, and the word 'pridestapo', that Keen is herself sympathetic to Nazi views or associated with Nazi groups in anyway. It is apparent that the textual and visual conjunction of "Pride" with "Gestapo" is to analogise the authoritarian policing done by the Gestapo, to the authoritarian policing of dialogue around women's interests and women's rights by some extreme activists in the Pride lobby (which is distinct from people who identify as gay and lesbian themselves who are a diverse group, many of whom agree with the "pro women's rights" position).
>
> 13. As to the allegations about Lisa Morgan, the reliance on this speech is intentionally misleading. It is clear that Ms Morgan was not celebrating Hitler but condemning political stances that rely on 'big' lies for success …
>
> 14. As to the reliance on the actions of the National Socialist Network on 18 March 2023, those persons were not associated with the "Let Women Speak" event. Ms Keen and Ms Angie Jones have declared multiple times that these men were not associated with their event: https://www.youtube.com/watch?v=M4lZ5u8uws4&t=615s Ms Jones and Ms Keen; https://twitter.com/angijones/status/1637242427370250241 Ms Jones; https://www.theaustralian.com.au/nation/violence-erupts-at-antitransgender-rally/newsstory/87e06cdf34e9551c2d869849fd41d550 Ms Keen. The Australian Jewish Association has declared that these were not associated groups. https://fb.watch/jtexMR52dM/ .
>
> 15. The allegations about my meeting with Ms Keen, Katherine Deves and Angie Jones after the Let Women Speak event on 18 March 2023 are misleading. We met at my urging as recorded on the video so we could address the invasion of the event. As recorded in the video, we started explaining that at the start we did not know who they were. They were thought to be Antifa who wear all black and cover their faces. Antifa have tried to attack similar events overseas. I mentioned we had a volunteer who tried to stop them coming into our area and the police seemed to usher them onto the steps and then past our event …
>
> 16. I condemned the horrifying Nazi salute. I did not explicitly condemn the men as Nazis because at that stage none of us were aware that these were confirmed Nazis. My uncle was a holocaust survivor. One lesson he instilled in me clearly was to not downplay the horrific tragedy and evil of the holocaust by accusing anyone of being a Nazi unless you were 100 per cent certain.
>
> *Angie Jones*
>
> 17. Angie Jones is a left-wing, pro-gay rights, radical feminist, Jewish woman. It is simply not credible that she is a Nazi or pro-Nazi.
>
> 18. Her Tweet was after the event and I could not be aware and was not aware of the Tweet when I met with her. I unreservedly condemn her use of a Nazi analogy.
>
> …
>
> 20. The full set of interactions make it clear that the Nazis were not part of the planned event and they were there on their own accord to face against the 'Antifascists'. In the mind of any reasonable lay observer, Ms Jones clearly disassociates herself and the event from the neo-Nazi intruders.
>
> 21. In regard to the last Tweet, I am not defending Ms Jones' choice of words but her clear point was that if even Nazi's (the worst of the worst) are against paedophiles, why are you not? I unreservedly reject the use of Nazi analogies in the strongest terms.
>
> …
>
> 24. The proponents' serious allegations have not been established and are directly contradicted by the evidence on which they rely. In light of the evidence, the only credible response is to withdraw, or in the alternative, vote against this motion. Voting in support of a motion which lacks a real or credible evidentiary basis would bring disrepute upon our Parliamentary Party.

312 Later that morning, a party room meeting was held to vote on the expulsion motion (the **27 March meeting**).

313 Ms Heath's contemporaneous notes of the 27 March meeting are Ex R240. Relevantly, they record as follows (errors in the original):

> JP proposed a secret ballot. Three scrutineers. One for John, one for Moira and a third as witness.
>
> Everyone is present. It will need 16 votes to pass
>
> John: I won't read the motions. You all have that. Its been a difficult week. I can only assure you as I did last Tuesday that I would never have brought this forward unless I had to. I would never would have put my leadership to this type of test unless I absolutely had to do it. It we are to be a winning force, then we have to be true to what we have been telling ourselves we are going to do. We need to be professional and focused. We need Victoria to see we are reliable, focused. Unless we take this step we are proposing today, we cannot do that. Its only been a short time since I have got the pleasure of leading and we have started to make gains. Every time we get a run and start landing blows we get drawn away from it and that is serious. It leads to brand damage. I want to assure you that I do firmly believe that there is space in the liberal party for a whole range of views. We have to have in mind that its not just our colleagues but the state that has entrusted us to leading. There is room in our house for a brand range of views. The decision that I am asking you to take today and a collective is leadership. This is a tough decision, there is nothing personal in it.
>
> We have issues that we need to prosecute. Cost of living. Energy prices. If we cant do this I wonder if we are up to what is required. I was at pains to work through the issues as I did last weekend. I know what sacrifices you made. This pathway is to make sure your sacrifices are worth it. The leadership I'm offering is one that says I want to win.
>
> This is the first of many tough decisions we are going to have to make if we want to win.
>
> He spoke for 10 minutes.
>
> Richard: On Tuesday I along with others believed that there was a third option in dealing with this. We have all been put in this room with the same position. Expulsion is a very last result. Spoke to the constitution and notice of motion. Even the ABC cannot prove the allegations of neo nazi sympathies. We are not here to disagree with our leader. The motion raises two issues: neo nazi sympathies and hate against trans. Neither have been able to be proven. We cannot kick her out on two unjustifiable lies. Moiras legal case against us is massively strong. If we are going to get rid of a strong, young woman that has joined our rank, I am devastated at the consequesnes of this motion.
>
> Bev: needless to say I would urge everyone not to support. This is one of the hardest day of my life. This is the most devastating day of my life. I lost my son, and if this wasn't something extremely important, I would be on a plane on the way to Scotland to attend the funeral of my late sons god father. I will always stand for womens rights. If I hadn't been in Sydney at a womens conference, I would have been there with moira fighting for the rights of women. I am here for womens and young girls so they are safe. We have to stand up for women. We had a change to stand for women when men in black came and hijacked a womens rally. This is not about your leadership john. You have set out to expel a woman in this party. We have received a flurry of emails. People have emailed in, there have been flurries of emails to support Moira. We look stupid. If we are to be a party that embraces all view, then we have to be sure that we advocate for the views of 50% OF THE population. A lot of moiras supporters are lesbians and they are the ones that are getting attacked. If we spent out energy fighting ideas, not personalities we will be a winning force. We are all entitled to a different opinion and we are entitled to voice it. Please do not make us go down the path of socialist.
>
> Brad B: john, you said some things about leadership. We all need to move forward. This should not have been. I went out of my way to talk to the police crew that were involved in this process. Vic police knew one of the men in that group. He is a known nazi. They have a big restriction in that we can do. There was no mazi symbols. Laws did not allow them to move them on. The most violent group was a trans group. The next day the vic pol were taken aside by the glow, we need the full details of that process. There is an opportunity to come up with another option.
>
> We need to come together and know what the standards are. I have been here 12 years and I have never had those conversations. It has to be a line in the sand.
>
> Georgie: as I said on Tuesday nobody wants this. Not one of us wants to be in this room today but we are because of a scenario that has arises.
>
> Over the past few weeks there has been some things about some things that Moira has said. Everyone knows that moira has stood for things for many, many years. She has a public profile. When she made her maiden speech there were some issues and john and I spoke to her. We came into this party room as equals. We spoke about the sensitives around these issues. We tried to provide around the issues that were raised to give advice. You might have been an activist before you were in parliament but now youre an MP. We are all MP's surely we should understand basic standards.
>
> I didn't hear the womens say speech, I understand it was about the rally. Then the rally happened. You knew what you were walking into. David reached out and said we need to deal with this and there was no nothing – defiance again. There was no understanding about what needs to be done. This isn't about a womens issue, its not about freedom of speech, this is a pattern. There is a pattern of defiance and no advice. I am sorry anout that moira because I have come to you and wanted to help you and nothing. This is about leadership. I urge you to support this motion.
>
> Ryan: in response to georgies commentary. Its not about those things. Its about the two things right here (held up motion paper). The reasons that Georgie raised are not here. All of these issues that are being put forward, are not on the motion. Georgie signed this and she hasn't put any of this on the motion. There are 2 issues – if you believe in them, support the motion.
>
> David Davis: that is a little bit simplistic ryan. Its in Georgies rights to put forward these points. There is motion there but there is also a context.
>
> Kim: I wont know whether im sad of angry to have got to this point. After the last loss I thought we were taking a new direction. Instead of shooting overselves in the foot – we are shooting ourselves in the head. We don't respect everyones views. I thought that's what the liberal party was all about. I cannot believe how badly this has been handled John
>
> Chris: read from his notes. The neo nazis were not invited and were not welcome. I oppose neonazies. We must push against against guilt by association. This could happen to any of us. This will make members being afraid to stand for what they believe in. any of us could be moira one day. Federally – we always got behind each other when things came up. Disciple if needed can be done in different ways. To be told after, is not fair. This will only further divide our party. I encourage the colleagues to
>
> Joe: I love the liberal but hate this situation. I hate it beyond belief. When I had my maiden speech, there was a lot of people who supported me, they supported me and they reached and. Moira came up to me and looked me square in the eyes and said "Joe, I am proud of you". They are not the words of someone who hates gays of lesbians. I saw Moira for who she was. I am put in an impossible situation because I am made to choose between two people I respect. Whichever way this vote goes, its going to be crap. I don't even want to walk out there. ,We need to find an option that saves face for John, but saves Moira.
>
> Renee Spoke
>
> Matt Bach: I have found this so incredible hard. I found last weekend that this is a necessary step. We cannot be wedding to extremists. I urge you to support the motion.
>
> Nick: I share Kims initial feelings. I cannot understand what we are doing as human beings to be quite honest. I read the motion, I do not agree for a minute that Moira is a neo nazi. We will all make mistakes. If the motion is successful today you are actually labelling someone a nazi. Moira is going to have to live with that. Its like calling someone a murderer, a rapist or a paedophile. Substance is key because there is not a penalty that is worse than this. Most peoples minds are probably made up and that is the saddest thing. You have to maintain an open mind right until the end. If moira had been told that she couldn't go to the rally and she did, I might be able to support this motion – but that didn't happen.
>
> David Hodgett: sadly this issue has become a vote for, or for the other when the majority in the room probably want both. I spent quite a bit of time with Moira this week and I am sure she would do things differently if we had our time again, and so would the leadership. A lot of us are pissed off that we are placed in this position where we have to choose one or the others. I cannot believe that the 31 of us in this room cannot find a sensible way forward. I urge that we find a sensible way forward. Some of the behaviour of one way was absolutely appalling.
>
> David Southwick: I was unsure whether I should speak, because I know when I speak people say to me that im too close to it. I want to thank Chris and Renee for the calling those men for what they were, which is neo nazis. I don't think Moira is a nazi. I haven't said that I will not say that. She is not in any way but we are members of parliament. When something is wrong, we need to do what is needed to be able to fix it. I don't accept that sitting on the couch talking about conspiracy theories is calling that out. If the nazis hadn't showed up, we wouldn't be in this room. Couch conversation, having champaign and talking about conspiracy theories is calling it out. It is not acceptable to change you profile picture to have a barbie doll dressed as a nazi as a profile picture. I took John on Sunday to the holocaust centre. We didn't make it a media thing – Joe a 92 holocaust and said "please don't allow this to happen again".
>
> What should have happened on that couch is "there were nazis that crashed a rally". Those nazi wont coming after jews, they were coming after trans.
>
> Its not about Jews. Its about anyone who is not them. We are members who need to call it out.
>
> John: the problem is we could not get a concession from moira.
>
> Ryan asked "so there is no room for compromise in this room?"
>
> JP: "not at this stage, no"
>
> Moira: the email that I wrote to you all, outlined what my experience was on Saturday. I emailed you a letter from my lawyer addressing the dossier. I immediately apologised. Moira will provide a copy of her speech
>
> Meeting suspended from 11:33 until 11:40
>
> 11:56am. Meeting called to order. We have reached a compromise. People have been moved
>
> The promised compromised –
>
> - moira to be suspended from the party room for 9 months
> - a joint statement
> - a media statement this statement will make clear that no one was accusing Moira of being a Nazi, or Nazi sympathiser.
>
> Effective: 9 months from this meeting.
>
> Motion:
>
> - nine months suspension immediately
> - joint statement from the leaders office in conjunction with Moira
> - we will release a statement that she is not a Nazi
>
> Agreed but not with a show of hands.

314 Those notes, or draft minutes, do not mention why "[p]eople have been moved". The undisputed evidence before me, however, was that Mrs Deeming gave an impassioned speech, which reduced some Members to tears, in which she shared her own personal experience with sexual abuse, outlined why women's rights are so important to her, and explained that was why she wanted to protect other girls from experiencing the trauma that she had gone through.

315 There is, however, a dispute between the parties as to what was actually resolved, or the meaning of what was resolved at that meeting.

316 It is as well to deal with it now.

317 During the break in the meeting at 11.33am and recorded in the minutes above, there were negotiations in which Mr Hodgett, Mr Smith and Mr Wells acted as intermediaries between Mrs Deeming and Mr Pesutto and Mr Southwick to reach a compromise.

318 Mrs Deeming's camp says that it was agreed that Mr Pesutto and Mrs Deeming would produce a joint statement, being jointly prepared words with their two names at the top of it. Mr Pesutto swore that he understood "joint statement" to mean a statement issued by Mrs Deeming and approved by him, or as he put it, a statement from Mrs Deeming where his office "held the pen" (T857.24–26).

319 The final version of the minutes of the 27 March meeting, which were proffered by Mr Pesutto and approved at the 12 May 2023 party meeting, record the agreed motions differently, viz:

> **Amended motion**
>
> After discussion led by Mr Pesutto, the meeting agreed that Mrs Deeming not be expelled and that:
>
> 1. Mrs Moira Deeming be suspended from the Parliamentary Liberal Party, effective immediately for a period of nine months (until 27 December 2023);
> 2. The Leader's Office to work jointly with Mrs Deeming on an agreed statement to be made by Mrs Deeming;
> 3. The Leader confirms that there is no allegation made that Mrs Deeming is a Nazi or Nazi sympathiser.
>
> **Motion put and agreed to.**

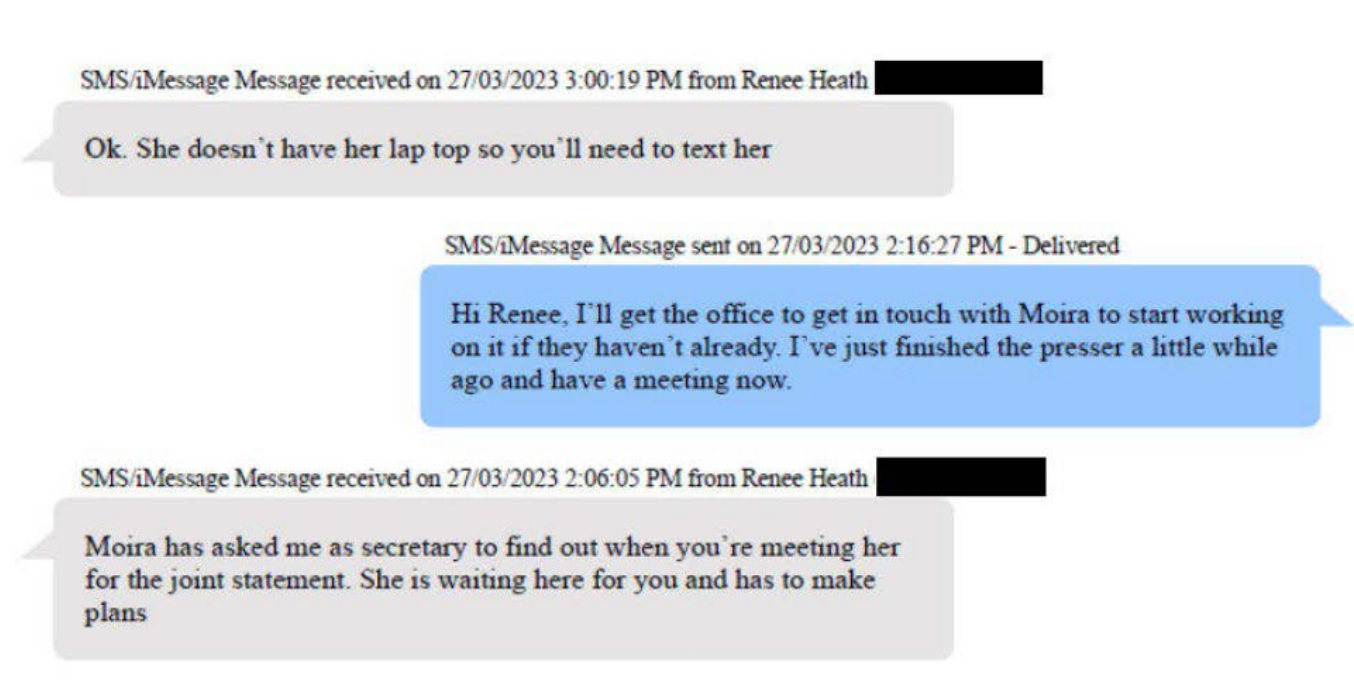
320 Much time was spent at the hearing, and much ink subsequently spilt, about whether Mr Pesutto had reneged on an agreement to prepare a "joint statement" in the sense that Mrs Deeming and her allies understood the expression, or not. I was invited to conclude that Mr Pesutto was not telling the truth, and that when he spoke the words "joint statement" at the 27 March meeting, he knew that what he had agreed to was a joint statement from him and Mrs Deeming on their letterheads, and then refused to honour the agreement, something that was said to go to the issue of aggravated damages.

321 I do not accept that Mr Pesutto was untruthful about that. Mrs Deeming's understanding of the expression "joint statement" is inherently a more likely one, but I accept Mr Pesutto's evidence that that is not what he subjectively understood he had agreed to.

322 There was also a dispute about whether the parties' intermediaries also agreed that Mrs Deeming was entitled to a "full exoneration", and that Mr Pesutto also reneged on that deal. The witnesses, to be sure, had different recollections about the matter, but I am not satisfied that any meeting of minds occurred to that effect. As Mr Pesutto said in his second affidavit, if Mrs Deeming was to be fully exonerated there would have been no need for a nine month suspension.

323 I return now to more of the events of 27 March.

324 Between 2.06pm and 3.00pm, Ms Heath and Mr Pesutto exchanged the following text messages (Ex A201):



SMS/iMessage Message received on 27/03/2023 3:00:19 PM from Renee Heath [redacted]

Ok. She doesn't have her lap top so you'll need to text her

SMS/iMessage Message sent on 27/03/2023 2:16:27 PM - Delivered

Hi Renee, I'll get the office to get in touch with Moira to start working on it if they haven't already. I've just finished the presser a little while ago and have a meeting now.

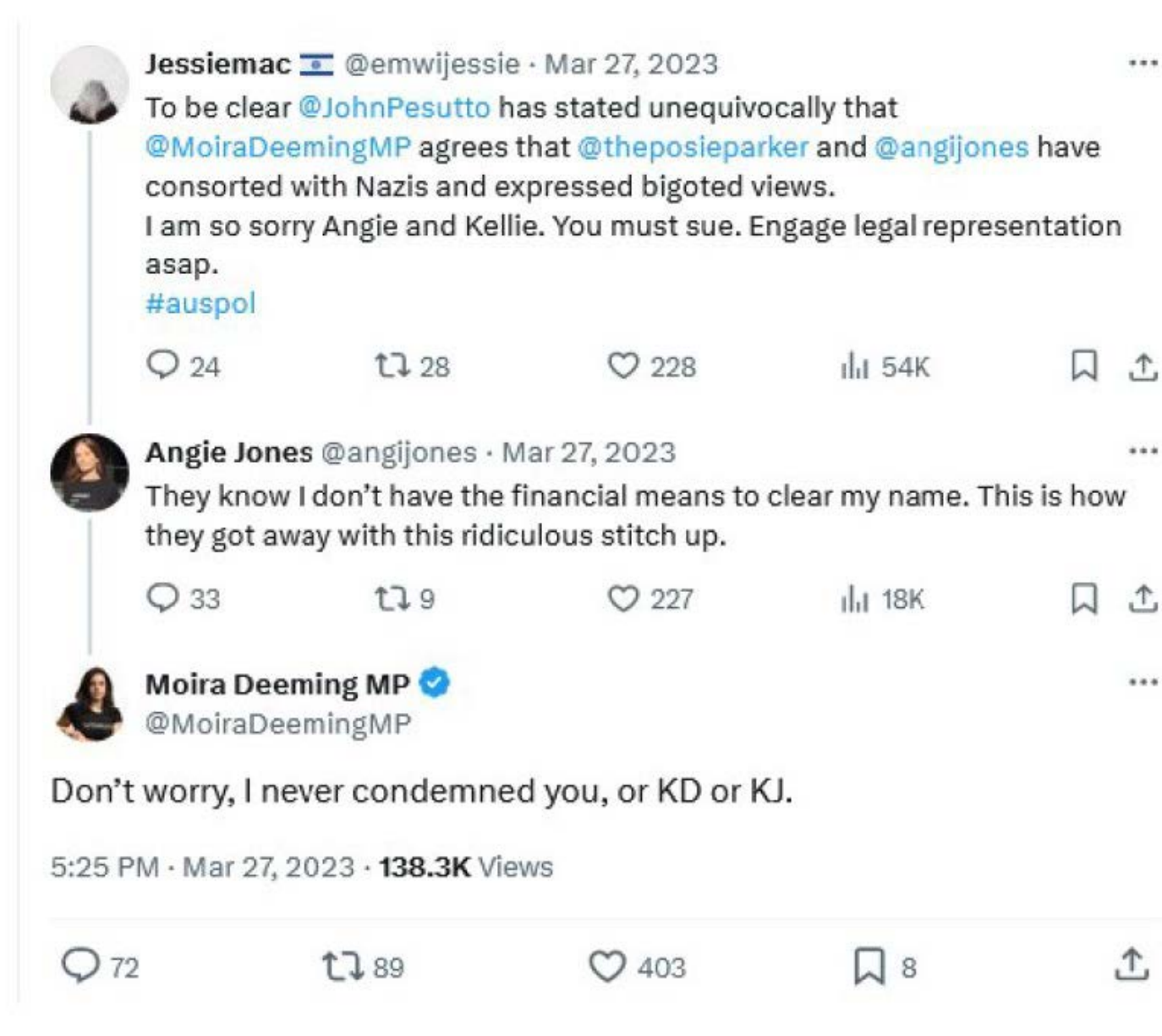
SMS/iMessage Message received on 27/03/2023 2:06:05 PM from Renee Heath [redacted]

Moira has asked me as secretary to find out when you're meeting her for the joint statement. She is waiting here for you and has to make plans

325 At 3.52pm, Mr Pesutto sent a further text message to Ms Heath requesting that she forward to him the minutes of the 27 March meeting (Ex A201).

326 At 3.59pm, Ms Heath sent an email to Mr Pesutto with her notes from the 27 March meeting (Ex R240), and sent a text to Mr Pesutto (Ex A201) which read, "Emailed unedited minutes text".

327 In response to a tweet stating that Mr Pesutto had "stated unequivocally" that Mrs Deeming agreed that Ms Keen and Ms Jones "have consorted with Nazis and expressed bigoted views", and to a tweet by Ms Jones, Mrs Deeming published the following tweet at 5.25pm (Ex R48):



Jessiemac 🇮🇱 @emwijessie · Mar 27, 2023

To be clear @JohnPesutto has stated unequivocally that @MoiraDeemingMP agrees that @theposieparker and @angijones have consorted with Nazis and expressed bigoted views.
I am so sorry Angie and Kellie. You must sue. Engage legal representation asap.
#auspol

Angie Jones @angijones · Mar 27, 2023

They know I don't have the financial means to clear my name. This is how they got away with this ridiculous stitch up.

Moira Deeming MP
@MoiraDeemingMP

Don't worry, I never condemned you, or KD or KJ.

5:25 PM · Mar 27, 2023 · **138.3K** Views

328 During the course of the afternoon, there were meetings between Mrs Deeming, Mr Southwick and Mr Wells about drafting a statement. Needless to say, the parties did not agree on what was said at the meetings, but the subject matter has no bearing on any serious and substantial issue before me.

329 At about 7pm, Mrs Deeming and Mr Woff exchanged WhatsApp messages about a statement (Ex R44). Mr Woff sent Mrs Deeming a draft statement headed "Statement from Moira Deeming MP". Mrs Deeming responded by pointing out a typographical error. Mr Woff then sent a message saying "we are sending out now" and a further draft with the error corrected which he described as the "final copy". He asked Mrs Deeming "are you ok for us to send this out to media on your behalf?". Mrs Deeming responded, "Yep great" and Mr Woff replied "thank you, sending now."

330 A statement expressed to be "from Moira Deeming MP" was sent out by the Liberal Nationals Media at 7.08pm on 27 March 2023 (**27 March statement**) (Ex R45). It read:

> Monday 27 March 2023
>
> **Statement from Moira Deeming MP**
>
> I have accepted that my attendance at the Let Women Speak event on the steps of the Victorian Parliament on Saturday 18 March may have been an error of judgement.
>
> I accept the suspension given to me by my colleagues.
>
> As I have stated, I unreservedly condemn the poor taste Nazi jokes and Nazi analogies listed in the annex of evidence against me.
>
> I believe I am innocent of all imputations and accusations of any connection whatsoever with Nazism in any shape or form and any bigotry whatsoever toward the LGBTQI+ community.
>
> As I always have, I will continue to support the many diverse communities in Victoria.
>
> I have repeatedly and consistently condemned these heinous views, and I reiterate my condemnation of these views in the strongest possible terms.
>
> I support John Pesutto and the leadership team and look forward to working with them into the future to win government in 2026.

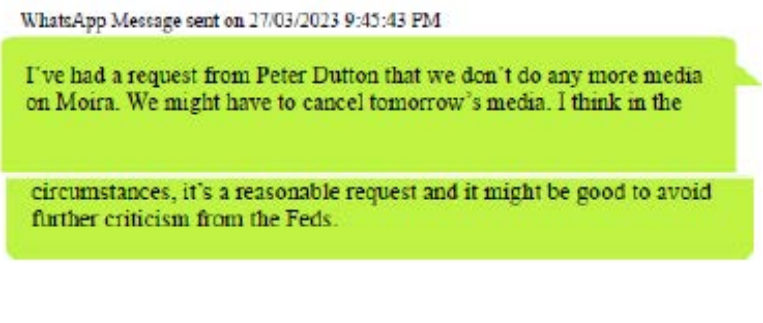
331 After 9.01pm, Ms Credlin asked Mrs Deeming via text message, "Did you get your statement as promised?", to which Mrs Deeming responded, "I argued for hours. I stormed out once. And I'm not publishing it anywhere lol. I'll send it to you but they had to put it out themselves lol" (Ex R176).

332 At 9.05pm, Mr Johnston sent the following WhatsApp message to Mr Pesutto and the leadership team (Ex A70):

> Re Herald Sun story - we were careful today to make sure Moira's statement reflected her email to MPs this morning. 1) She was remorseful about attending the rally and 2) she condemned the use of Nazi symbols and analogies by Keen and Jones. I think with media tomorrow morning we can say this if asked but re her tweets tonight we can say that she is currently suspended from the party and she will need to earn her place back. Ultimately it's a matter party and how she conducts herself over the next nine months. That includes what she says and what she does. And she will need to show she is a team player. Then wait as she blows herself up.

333 At 9.30pm, Mr Peter Dutton MP, the Leader of the Opposition in the Australian Parliament and Leader of the Liberal Party of Australia, sent a message to Mr Pesutto saying "John for the sake of [the] Aston [by-election] could we pls put this issue to bed today. No more media pls" (Ex A205).

334 At 9.45pm, Mr Pesutto sent a WhatsApp message in a thread including the leadership team and other staffers (Ex A203) in which he said:



WhatsApp Message sent on 27/03/2023 9:45:43 PM

I've had a request from Peter Dutton that we don't do any more media on Moira. We might have to cancel tomorrow's media. I think in the

circumstances, it's a reasonable request and it might be good to avoid further criticism from the Feds.

335 This prompted the following exchange of messages:

(a) Mr Woff: "I think it's unavoidable, there will be a day two from this regardless if we engage or not";

(b) Mr Johnston: "Agree. Can we say we have committed to it in the morning and then we will do no more after that";

(c) Mr Pesutto: "I hear you, but I really don't want another hostile front opening up. It's been a difficult day and I think it would be better to cancel tomorrow's media. I can see the feds blaming me for Aston so lying low, at least as far as we can see, makes sense for us";

(d) Mr Southwick: "I think you should do the media already committed to otherwise it will be more of a story and then lie low. The Feds have never done us any favours";

(e) Mr Pintos-Lopez: "I think we're locked in for the morning. We want to have a good relationship with the media rather than Dutton. We can fix him later. They'll report we pulled out. Let's do the morning and then that's it".

28 to 30 March 2023

336 At 4.55pm on 28 March, Mrs Deeming sent an email to Mr Pesutto and Ms Heath requesting “a copy of the minutes and a copy of the terms of the suspension motion” from the 27 March meeting (Ex R46). Mrs Deeming deposed in her first affidavit that:

> Mr Pesutto did not address [her] concerns, or even contact [her], about the lack of documentation of the 27 March Compromise, or his refusal to honour it, or his failure to produce the minutes of the 27 March Meeting, or his false public statements about each of those matters. [She] felt shut out and upset.

337 At 7.55am, on 29 March, Ms Heath sent to Mrs Deeming her notes from the 27 March meeting via their respective Gmail accounts (Ex R47).

338 On 30 March, Mr Crewther sent an email to Ms Heath (CC:501) with a copy of his notes from which he had read at the 27 March meeting, and Mrs Deeming sent an email to Ms Heath (CC:502) with the text of the speech she had read at the 27 March meeting.

339 At 3.55pm, Ms Heath sent her notes from the 27 March meeting to Mr McGowan (Ex A25).

340 At 5.02pm, Ms Heath sent an email to Mr Gary Anderton, who was a member of Mr Pesutto’s staff, attaching, among other documents, a second version of the 27 March minutes as well as a copy of Mr Crewther’s speech and a copy of Mrs Deeming’s speech (CC:503). In that email, Ms Heath stated, among other things:

> As Moira will not be able to attend the Party Room next time, she will need an opportunity to raise any issues she has with the current minutes before they are accepted by the party room. Would you like me to seek comments from her so I can share those, if any at the next Party Room meeting?

341 At 5.34pm, Mr Anderton replied to Ms Heath, with the following (CC:504):

> Not at the moment, I’ll seek some advice.
>
> Will go through the process and I will come back to you.

April 2023

342 On 9 April, Mrs Deeming sent an email to Mr Pesutto (copying in Ms Heath) again requesting the minutes (Ex R250).

343 On 24 April, Mr Southwick sent a text to Mr Wells to set up a meeting between them and Mr Pesutto (Ex R256).

344 That same day, Mr Pesutto called Ms Heath to discuss the minutes of the 27 March meeting (CB:9, 176[49]). Ms Heath deposed that Mr Pesutto said, among other things, that she needed “to change the compromise which is recorded in the minutes”. In his second affidavit, Mr Pesutto deposed that he did not recall seeking any specific change of the compromise in that conversation, but did recall that he was generally very concerned about the way in which minutes had been prepared, as they appeared to him to be close to a transcript, and that he thought they had apparently been leaked to a “very limited number of people” (CB:31, 376[40]).

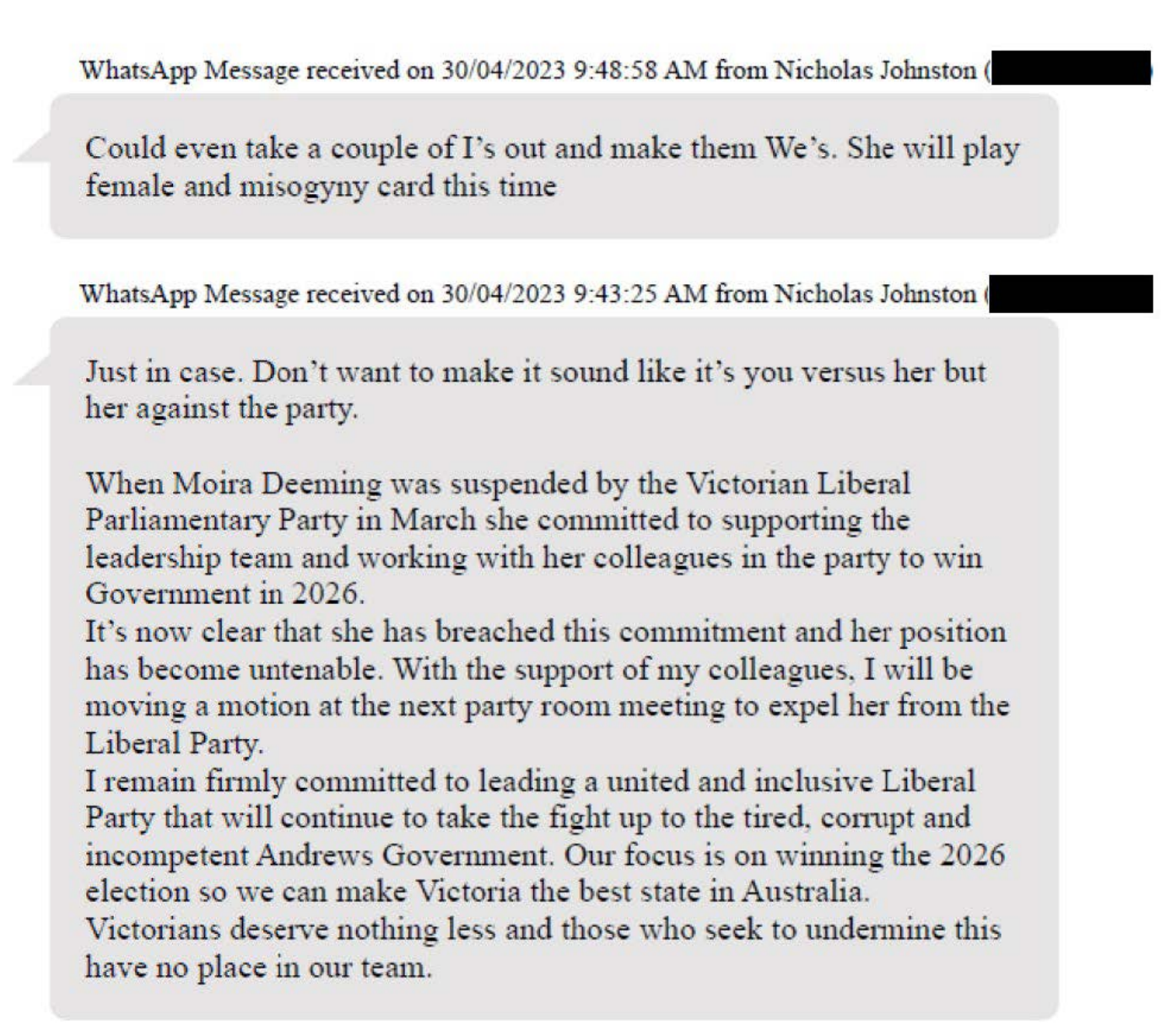
345 On 26 April, at 12.50pm, Mrs Deeming sent an email to Mr Wells in relation to potential defamation proceedings (Ex R53). At 1.07pm, Mrs Deeming forwarded this email to Ms Credlin (Ex R54).

346 At 1.06pm, Mrs Deeming sent an email to Ms Heath requesting, among other things, a copy of the minutes of the 27 March meeting (CC:521).

347 At 2pm on 26 April, there was a meeting between Mr Pesutto, Mr Southwick and Mr Wells (CB:27, 302[41]).

348 On 27 April, Mr Johnston prepared a draft statement for Mr Pesutto announcing his intention to move a second motion to expel Mrs Deeming from the Victorian Parliamentary Liberal Party (Ex A212).

349 On 30 April, Mr Johnston sent the following draft statement to Mr Pesutto (Ex A213):



WhatsApp Message received on 30/04/2023 9:48:58 AM from Nicholas Johnston ([redacted]

Could even take a couple of I’s out and make them We’s. She will play female and misogyny card this time

WhatsApp Message received on 30/04/2023 9:43:25 AM from Nicholas Johnston ([redacted]

Just in case. Don’t want to make it sound like it’s you versus her but her against the party.

When Moira Deeming was suspended by the Victorian Liberal Parliamentary Party in March she committed to supporting the leadership team and working with her colleagues in the party to win Government in 2026.
It’s now clear that she has breached this commitment and her position has become untenable. With the support of my colleagues, I will be moving a motion at the next party room meeting to expel her from the Liberal Party.
I remain firmly committed to leading a united and inclusive Liberal Party that will continue to take the fight up to the tired, corrupt and incompetent Andrews Government. Our focus is on winning the 2026 election so we can make Victoria the best state in Australia.
Victorians deserve nothing less and those who seek to undermine this have no place in our team.

May 2023

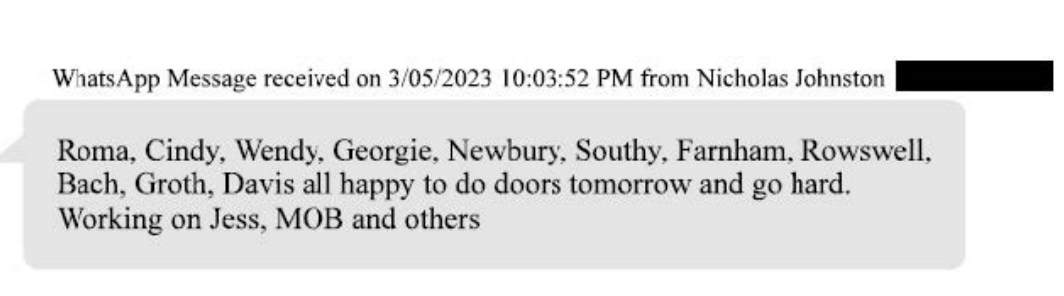
350 On 1 May, Ms Heath sent an email to Mr Anderton (CC:545) ahead of the meeting of the Victorian Parliamentary Liberal Party scheduled on 2 May. Her email attached, among other documents, a third version of the 27 March minutes (Ex R243).

351 There was a party meeting on 2 May. During the meeting, Mr Pesutto rejected Ms Heath’s minutes of the 21 March meeting and the 27 March meeting, and it was agreed that Mr Pesutto and his office would work with Ms Heath, Mr Wells and Mr Southwick to prepare an agreed set of minutes for the 21 and 27 March meetings.

352 On 2 May, Mrs Deeming texted Ms Credlin, “Kim doesn’t know how you got Renee’s email just FYI”. Ms Credlin responded, “He might. He kept asking me if I had it. I didn’t confirm any source. Never have. Only ever ruled sources out eg Heath as I did tonight” (Ex R176).

353 On 3 May, Mrs Deeming and Mr Wells had a meeting with Mr Southwick (CB:27, 302[46]).

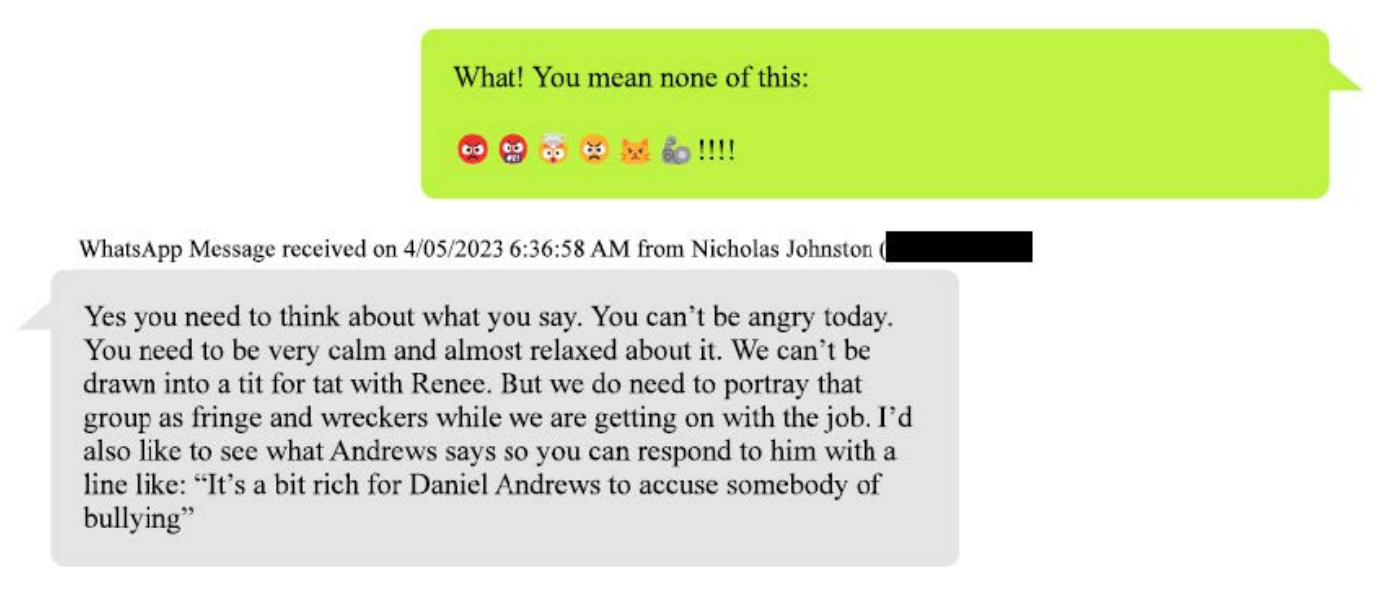
354 At 10.03pm on 3 May, Mr Johnston sent Mr Pesutto the following WhatsApp message (Ex A79):



WhatsApp Message received on 3/05/2023 10:03:52 PM from Nicholas Johnston [redacted]

Roma, Cindy, Wendy, Georgie, Newbury, Southy, Farnham, Rowswell, Bach, Groth, Davis all happy to do doors tomorrow and go hard. Working on Jess, MOB and others

355 Early in the morning on 4 May between around 6.27am and 6.36am, Mr Pesutto exchanged the following WhatsApp messages with Mr Johnston (Ex A79):



What! You mean none of this:

😡🤬🤯😤😾💪!!!!

WhatsApp Message received on 4/05/2023 6:36:58 AM from Nicholas Johnston ([redacted]

Yes you need to think about what you say. You can’t be angry today. You need to be very calm and almost relaxed about it. We can’t be drawn into a tit for tat with Renee. But we do need to portray that group as fringe and wreckers while we are getting on with the job. I’d also like to see what Andrews says so you can respond to him with a line like: “It’s a bit rich for Daniel Andrews to accuse somebody of bullying”

356 At 6.45am on 4 May, Mrs Deeming sent an email to Mr Pesutto in which she said, among other things, “if by 2 pm today, we do not have an agreed upon statement that exonerates me from the charges laid against me, (as per the party room agreement) I will consider that the Leadership have failed to honour the suspension agreement and I will be forced to challenge it officially, demand reentry (sic) to the party room and instruct my lawyers to commence legal proceedings” (Ex R55).

357 Mrs Deeming forwarded her 6.45am email to Ms Credlin at 6.46am (Ex R270), Ms Rachel Baxendale (a journalist at *The Australian*) at 7.17am (Ex R269) and Mr Wells at 10.38am (Ex R271).

358 That day, Mr Southwick met with Mrs Deeming and Mr Wells.

359 Also on 4 May, Mr Pesutto gave a press conference in which he said, among other things, “[n]othing in the dossier ever accused Moira Deeming of being a Nazi or herself having Nazi sympathies.”

360 Mrs Deeming sent an email to members of the Parliamentary party at 3.28pm on 4 May 2023 (Ex R57). In that email, she said, among other things:

> Given that the Leadership did not make the statement of exoneration, or confirm my return, and that no mediation or even any minutes exist to settle this dispute, I have advised my lawyers to prepare a legal challenge over my suspension, because I believe that we need to come together as colleagues and have a do-over meeting.

361 At 3.51pm, Mrs Deeming told a journalist at the *Herald Sun*, off the record, that she intended to commence legal proceedings against Mr Pesutto (Ex R231).

362 On 5 May, Mr Pesutto arranged to meet Ms Crozier and Mr Southwick at 12.30pm (Ex A47).

363 At 6.31pm that day, Mr Woff sent a WhatsApp message to Mr Johnston (Ex A214) saying:

> And TVs good tonight, push to expel Moira is organic and doesn’t appear driven by leadership – it’s the party room that’s had enough.
>
> Temperature is right to go hard and get it done. Need to push and see it through

364 Later that day, Mr Pintos-Lopez sent a draft motion to expel Mrs Deeming to Mr Boffa and Mr Pesutto (Ex A48). The reasons given for the expulsion motion in the draft were that Mrs Deeming had:

(1) infringed a rule of the Victorian Liberal Party Constitution; and

(2) conducted activities in a manner likely to bring discredit on the Parliament or the Parliamentary Party.

365 At 11.13am on 6 May, Mrs Deeming published the following statement as a tweet (Ex R59):

> As is now clear from the minutes that have finally been published, the Victorian parliamentary Liberal Party agreed on March 27 that “no one was accusing (me) of being a Nazi or a Nazi sympathiser”.
>
> And even though Liberal leader, John Pesutto MP never made the joint statement that the meeting agreed he should, he did say publicly on Thursday that “nothing in the dossier ever accused (me) of being a Nazi or herself having Nazi sympathies”.
>
> All I have ever wanted, since the leader’s failed attempt to have me expelled for allegedly bringing the party into disrepute, was to have my name cleared.
>
> I have never once considered suing the Liberal Party and reports that I have, or had planned to do so, are false. It is important to clarify here that I only contemplated legal assistance (eg mediation) as a way of helping me negotiate to settle the conditions of my suspension and to see what was agreed in the party room in March honoured. To date, others, acting on my behalf, have been working with the Liberal Leadership team to help resolve this issue, but to no avail. Moreover, when I was told on Thursday night that the Leadership team had rejected my request for a legally mediated re-do of the meeting to properly settle the conditions of my suspension, I immediately advised the Victorian Liberal Party President, Mr Greg Mirabella, that I would pursue it no further.
>
> Thankfully, it is now clear from the published minutes that the original expulsion motion was never formally put to the party room. I consider this fact vital, because it proves that my suspension is unconnected to the expulsion allegations. These minutes afford me the full, official, written, public exoneration that the Leadership seems unwilling to provide.
>
> The past six weeks have taken a terrible toll on me personally. I have had to publicly disclose childhood sexual abuse and endure constant media attacks while remaining silent. At all times I have tried to work through internal processes to resolve these issues and declined to air public criticism of the Liberal party.
>
> Now, I am moving on.
>
> I was elected as a Liberal; I remain a proud Liberal; and I look forward to re-joining the party room at the end of the year.
>
> Thank you to everyone who has supported me through what’s been a very difficult time.

366 At 1.19pm, Mr Johnston sent to Mr Woff a draft proposed statement from Mr Pesutto announcing his intention to move a motion to expel Mrs Deeming (Ex A49).

367 At 1.54pm, Mr Pesutto sent a message to Mr Michael O’Brien MP (the Liberal Member for Malvern in the Legislative Assembly), asking if he would be one of the five signatories to a motion to expel Mrs Deeming (Ex A50). When Mr O’Brien declined, Mr Pesutto then asked whether he would “be prepared to do a motion on Renee [Heath]”, removing her as secretary.

368 At 1.59pm, Mr Johnston sent to Mr Woff a further draft proposed statement from Mr Pesutto announcing an intention by himself and others to move a motion to expel Mrs Deeming (Ex A51).

369 At 2.08pm, Mr Johnston sent to himself (copying Mr Woff) a draft proposed statement from Mr Pesutto announcing he had received a notice of motion from five Liberal Party MPs to move a motion to expel Mrs Deeming (Ex A52).

370 At 2.29pm, Mr Pesutto sent a message to Ms Wendy Lovell MLC (the Liberal Member for the Northern Victorian Region in the Legislative Council) about being a signatory to a motion to expel Mrs Deeming (Ex A53).

371 At 3.53pm, Mr James Newbury MP, Mr Guy, Ms Cindy McLeish MP, Ms Roma Britnell MP, and Mr Wayne Farnham MP, gave notice of an intention to move a second expulsion motion in an email sent to Ms Heath (copying in Mrs Deeming) (CC:576). The reason provided was “that Moira Deeming has engaged in conduct in violation of Clause 57, bringing discredit on the Parliamentary Party.”

372 At 4.10pm, Mr Pesutto forwarded this email to the Victorian Parliamentary Liberal Party (Ex R280).

373 At 4.21pm, Liberal Nationals Media issued a statement from Mr Pesutto about the second expulsion motion (Ex A55).

374 On 7 May, Mrs Deeming sent an email to Mr Pesutto (and others within the Parliamentary Liberal Party) asking, “Could I please have a copy of the alleged conduct that has apparently brought the Party into disrepute?” (Ex A56).

375 On 9 May, at 10.51am, Mr Riordan sent an email to Mr Pesutto expressing his view that the second expulsion motion was not compliant with the Parliamentary Constitution because it did not give a specified reason for the proposed expulsion and had no signatures (CB:20, 251[31]; CB:21, 259[22]).

376 The same day at 3.32pm, Mrs Deeming sent an email to Ms Heath (copying in Mr Pesutto and the five movers of the second expulsion motion), in which she requested, among other things, a “copy of the exact conduct to which the expulsion motion refers” (Ex A57).

377 On 11 May, Mrs Deeming served on Mr Pesutto a Concerns Notice (Ex R282) pursuant to the *Defamation Act 2005* (Vic) (the **Act**). Mrs Deeming also sent the Concerns Notice to Ms Credlin and Ms Baxendale (Ex R49).

378 On 12 May, Ms Baxendale published an article in *The Australian* entitled “Moira Deeming serves John Pesutto with defamation concerns notice”, which quoted from the Concerns Notice Mrs Deeming served on Mr Pesutto on 11 May 2023 (Ex R51).

379 The same day, there was a further party room meeting at which the second expulsion motion was carried.

Other evidentiary issues

380 The parties identified 27 evidentiary issues in the Agreed Factual Narrative, viz:

(1) The relevance and probative value of material relating to Ms Keen between 2019 and 2023.

(2) The reasons and relevance of why Mrs Deeming was not endorsed as the Liberal Party candidate for the Federal Electoral Division of Gorton in March 2022.

(3) What was said in the conversation over coffee between Mrs Deeming and Mr Pesutto in early December 2022.

(4) What was said during the conversations between Mrs Deeming and Mr Pesutto at the two day Coalition conference in January 2023.

(5) The relevance and significance of Mrs Deeming’s maiden speech on 21 February 2023.

(6) The contents of the brief exchange that took place between Mrs Deeming and Dr Bach in Parliament after she had given the speech on International Women’s Day in which she said she would be attending the LWS rally.

(7) The relevance of the interview given to Joy FM by Dr Bach on 11 March 2023.

(8) The relevance and probative value of the series of media articles about Ms Keen and LWS rallies held in Sydney, Brisbane and Perth between 10 and 14 March 2023.

(9) The relevance and probative value of a series of tweets involving Mrs Deeming and the LWS event which were published on 17 and 18 March 2023.

(10) The relevance and probative value and characterisation of media and social media about the LWS rally and Mrs Deeming on 18 and 19 March 2023.

(11) The content of the conversation between Mr Southwick and Mrs Deeming on the afternoon of 18 March 2023, sometime between 2.20pm and 2.55pm.

(12) What was said during the leadership team meeting held in Mrs Deeming’s absence between about 5pm and 5.20pm on 19 March 2023.

(13) The characterisation of the secretly recorded 19 March meeting between Mrs Deeming, Mr Pesutto, Ms Crozier, Mr Southwick, Dr Bach and Mr Pintos-Lopez.

(14) What was said in a series of phone calls involving Mr Pesutto, Mr Hodgett, Mr Wells, Mr Southwick, Mr Riordan, Ms Crozier and Ms Heath on 19 March 2023.

(15) The reporting on, and republication of, the media release.

(16) The relevance of messages received by Mr Pesutto on 20 and 21 March 2023 from persons who were aware of his decision to move a motion to expel Mrs Deeming.

(17) The reporting on, and republication of, the contents of the 3AW interview.

(18) The relevance of Mrs Deeming’s communications with journalists

(19) The reporting on, and republication of, the contents of the ABC interview.

(20) The extent of publication, and the reporting on and republication of, the contents of the press conference.

(21) The relevance and probative value of Mr Sewell’s interview on Odysee.com on 20 March 2023.

(22) The significance of an article published in *The Age* at 8.44pm on 20 March 2023, entitled “Deeming vows to fight move to expel her from party room”.

(23) The reporting on, and republication of, the contents of the EMD.

(24) What was said during the course of the 21 March 2023 meeting of the party.

(25) The resolution at the 27 March 2023 meeting of the party, and the meaning of that resolution to vote on the expulsion of Mrs Deeming.

(26) What was said between Mrs Deeming, Mr Southwick and Mr Wells in meetings held between them on the afternoon of 27 March 2023 about the drafting of a statement.

(27) The interpretation of WhatsApp messages exchanged between Mrs Deeming and Mr Woff on the evening of 27 March 2023.

381 Even more issues were raised in documents filed (with leave) after closing submissions. Mr Pesutto’s counsel filed “Statements made in applicant’s oral closings which require correction or clarification” dated 24 October 2024 and Mrs Deeming’s counsel responded with “Applicant’s response to the respondents (sic) further written note” dated 25 October 2024.

382 Many of those issues have little, if any, relevance to the serious and substantial issues required to be determined in this proceeding. If I may say so with respect, during the hearing many such matters took on a life of their own, which is reflected in the length of the written submissions. To adopt an expression used in a different context in some defamation cases, the trial at times resembled a “roving inquiry” into matters that were not “directly relevant to either the subject matter of the alleged defamatory statement, or the claimant’s reputation in the part of … her life the subject of the defamatory publication”. See *Rush v Nationwide News Pty Ltd (No 2)* [2018] FCA 550; (2018) 359 ALR 564 at 577 [45] (Wigney J).

383 Many of the issues arose because they were said to go to the question of an assessment of aggravated damages and to “credit”. I do not propose to plumb the depths of what the parties have said about many of those issues, because they have little, if any, bearing on any serious and substantial issue involved in the case.

Jones v Dunkel

384 Another issue raised by counsel for Mr Pesutto (aside from the 27 listed above) was Mrs Deeming’s “failure” to call Ms Keen and Ms Jones to give evidence.

385 I mention it only briefly lest it be thought I had overlooked something of importance.

386 The so-called “rule in *Jones v Dunkel*” is that an unexplained failure by a party to call a witness may, in appropriate circumstances, lead to an inference that the uncalled evidence would not have assisted the case of the party who might be expected to call the witness. See *Jones v Dunkel* (1959) 101 CLR 298.

387 The critical question is “what uncalled evidence”? In other words, assuming that Ms Keen and Ms Jones are in Mrs Deeming’s camp, which may safely be assumed, what evidence was it that they could have given, but did not? The highest it was put was that (at RCS [11.7] and [11.10]):

> [a] number of the issues in this litigation, including many of the matters the subject of Mrs Deeming’s reply, concern the conduct, beliefs, views and associations of Mrs Keen and Ms Jones. Many of the matters put to Mr Pesutto’s witnesses also contained presumptions or propositions as to Mrs Keen or Ms Jones’ state of mind or intentions (For example, the proper interpretation or intended meaning of the Jones tweet).
>
> … this trial has played out in circumstances where Mrs Deeming’s senior counsel repeatedly made assertions from the bar table about what Mrs Keen and Ms Jones must have meant by things they had said, or why their actions and associations should be excused, or how the obvious meaning of their social media posts or comments in videos have been misinterpreted or misrepresented. In respect of each of those matters, inferences to the effect that the evidence that Mrs Keen and Ms Jones could have given would not have assisted Mrs Deeming’s case can and should readily be drawn.

388 I do not accept those submissions.

389 First, Mrs Deeming’s reply dated 12 February 2024 (CA:4) does refer to Ms Keen and Ms Jones, but it does so in the context of providing particulars to Mrs Deeming’s defeasance case under s 31(4) of the Act that Mr Pesutto did not honestly hold certain views, including about Ms Keen and Ms Jones. Ms Keen and Ms Jones obviously could not give evidence about what Mr Pesutto did or did not honestly believe.

390 Secondly, and relatedly, what Ms Keen or Ms Jones subjectively intended to convey by their tweets is not directly relevant to any issue in this case.

391 Accordingly, I do not draw any *Jones v Dunkel* adverse inference of the type contended for.

Section 20 of the Defamation Act

392 I should also briefly mention a submission that was made about the applicability of s 20 of the Act.

393 It provides as follows:

> **20 Effect of apology on liability for defamation**
>
> (1) An apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person—
>
> (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and
>
> (b) is not relevant to the determination of fault or liability in connection with that matter.
>
> (2) Evidence of an apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.
>
> (3) Nothing in this section limits the operation of section 38.

394 In March 2024, Mr Pesutto was also sued in defamation by Ms Keen and Ms Jones in relation to his publication of the media release, the 3AW interview and the EMD. Those proceedings were resolved.

395 On 17 May 2024, Mr Pesutto made a public statement titled “Statement from the Leader of the Opposition” on his website which stated (and still states) (Ex A221; CC:690):

> Kellie-Jay Keen and Angela Jones are passionate women’s rights activists with long histories of advocacy in Australia and internationally. I agree with them that genuine community concerns regarding women’s safety and access to single-sex spaces, services and sport warrant meaningful public discussion.
>
> …
>
> I have never believed or intended to assert that Kellie-Jay Keen and Angela Jones are Neo-Nazis. It is also now clear from public statements made by Ms Keen and Ms Jones that they share my belief that Nazism is odious and contemptible.
>
> …
>
> It has never been my intention to convey that I believed Ms Keen and Ms Jones to be Neo-Nazis, or that they were members of Neo-Nazi groups. As far as my comments may have been misunderstood as conveying that I believed this to be the case, I apologise for any hurt, distress or harm that has occurred.

396 It was common ground that s 20(2) dealing with evidence of an apology is not picked up by s 79 of the *Judiciary Act 1903* (Cth) because it is relevantly inconsistent with s 56 of the *Evidence Act 1995* (Cth) (evidence that is relevant in a proceeding is admissible in the proceeding). Compare *Herron v HarperCollins Publishers Australia Pty Ltd* (2022) 292 FCR 336 at 420 [363] (Lee J).

397 Mrs Deeming submitted that s 20(1) (an apology is not evidence of an admission) is not picked up either because it is inconsistent with s 81 of the *Evidence Act 1995* (Cth) (the hearsay rule does not apply to evidence of a previous representation that was made in relation to an admission at the time the admission was made). Mr Pesutto contended to the contrary. (Mr Mullen relied on a written submission dated 9 October 2024 titled “Respondent’s submissions on objection to the tender and cross-examination of Mr Pesutto concerning the statement of apology he made to Mrs Keen and Ms Jones on 17 May 2024”, which he handed up to me on that date, but which has not been electronically filed.)

398 It is not necessary to resolve that issue in this proceeding.

399 First, Ms Chrysanthou recognised in her closing submission on the issue that “[i]t may not make much difference in the end, but that’s because my learned friends argue that [the] statement is not an admission that he knew at all times that they weren’t Nazi sympathisers” (T1413.25–28).

400 Secondly, it was never explained to me why the statement, or any particular part of it, was relevant to any substantive issue in the proceeding. And as Gleeson CJ said in *Dovuro Pty Ltd v Wilkins* (2003) 215 CLR 317 at 327 [25] “care … needs to be taken in identifying the precise significance of admissions, especially when made by someone who has a private or commercial reason to seek to retain the goodwill of the person or persons to whom the admissions are made”.

401 For those reasons, I do not have regard to anything that Mr Pesutto said in his public statement about Ms Keen and Ms Jones.

402 Before turning to the pleaded case, Mrs Deeming’s pleading was the subject of considerable squabbling at the hearing. Mr Pesutto’s counsel took me on a number of occasions to the transcript of a case management hearing before the original docket judge at which his Honour expressed criticism of the pleading and the number of pleaded imputations. But a plaintiff is not precluded from alleging that a publication conveys more than one imputation; they may allege that a published matter conveys two or more distinct defamatory imputations; they may allege imputations in the alternative; and subject to any defences, they will succeed if one or more of those imputations is found to be conveyed. See *Australian Broadcasting Corp v* ***Chau Chak Wing*** (2019) 271 FCR 632 at 647 [33] (Besanko, Bromwich and Wheelahan JJ); and ***Massoud*** *v Nationwide News Pty Ltd* (2022) 109 NSWLR 468 at 487 [57] (Leeming JA, with whom Mitchelmore JA and Simpson AJA agreed).

403 I should not to be taken to endorse the approach to pleading Mrs Deeming’s case as a model to be followed, but the trial was run on the pleadings; no application was made to strike out the statement of claim or any part of it; and Mr Pesutto’s counsel did not submit that the number of alternative imputations worked any significant unfairness on him.

THE PLEADED CASE

404 By a statement of claim dated 5 December 2023, Mrs Deeming pleaded a case the substance of which I will now set out.

405 As I said earlier, the text of the impugned publications (other than the media release, the full text of which I have set out above at [221], and again immediately below) is contained in annexures A, B, C and D to these reasons.

The media release

406 On 19 March 2023, Mr Pesutto published the media release, including to journalists. He also caused it to be uploaded to his own website and the website of the Victorian Liberal Party. The media release was headed “Statement from the Leader of the Opposition” and, it will be recalled, was in these terms:

> Sunday, 19 March 2023
>
> Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protesters engaged in an affront to the values we should all hold dear as Victorians.
>
> The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our State. I condemn them and commit to opposing such hate wherever it may exist.
>
> This afternoon I met with Moira Deeming MP who attended yesterday’s rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.
>
> At our meeting I informed Ms Deeming that I will move a motion at the next party room meeting to expel her as a member of the parliamentary Liberal Party as her position is untenable.
>
> This is not an issue about free speech but a member of the parliamentary party associating with people whose views are abhorrent to my values, the values of the Liberal Party and the wider community.
>
> The Liberal Party I joined and which I am now honoured to lead, must strive to represent all Victorians.
>
> Regardless of religious faith, race, sexual preference and identity, Victorians everywhere should know that the Liberal Party is inclusive and can be a voice for them.
>
> No matter what our background we all share the abiding bond of an essential humanity.
>
> Equality of opportunity, the benefits to each and all of an enterprising culture, the security that comes from the rule of law, the strength which stems from families and communities that can live together in search of happiness while sharing in Victoria’s prosperity, must extend to all people who reside in our land.

407 It was also alleged (it being relevant to the question of alleged damages) that the sense and substance of the media release was republished, as intended and/or authorised by Mr Pesutto and/or as the natural and probable consequence of its publication on the above websites, in the mainstream news media, on social media, and elsewhere via the “grapevine effect”, including in certain specified articles.

408 Mrs Deeming alleged in paragraph 5 of her statement of claim that the media release, in its natural and ordinary meaning, was defamatory of her and carried the following defamatory imputations (or imputations that do not differ in substance), namely that she:

> 5.1 supports white supremacists and Neo-Nazis.
>
> 5.2 holds abhorrent white supremacist and Neo-Nazi views.
>
> 5.3 knowingly associates with white supremacists and Neo-Nazis.
>
> 5.4 sympathises with white supremacists and Neo-Nazis.
>
> 5.5 is a Neo Nazi.
>
> 5.6 [not pressed].
>
> 5.7 is unfit to sit in the Victorian Parliament because she supports white supremacists and Neo-Nazis.
>
> 5.8 is unfit to sit in the Victorian Parliament because she holds abhorrent white supremacist and Neo-Nazi views.
>
> 5.9 is unfit to sit in the Victorian Parliament because she knowingly associates with white supremacists and Neo-Nazis.
>
> 5.10 is unfit to sit in the Victorian Parliament because she sympathises with white supremacists and Neo-Nazis.
>
> 5.11 is unfit to sit in the Victorian Parliament because she is a Neo Nazi.
>
> 5.12 [not pressed].
>
> 5.13 is unfit to belong to the Victorian Parliamentary Liberal Party because she supports white supremacists and Neo-Nazis.
>
> 5.14 is unfit to belong to the Victorian Parliamentary Liberal Party because she holds abhorrent white supremacist and Neo-Nazi views.
>
> 5.15 is unfit to belong to the Victorian Parliamentary Liberal Party because she knowingly associates with white supremacists and Neo-Nazis.
>
> 5.16 is unfit to belong to the Victorian Parliamentary Liberal Party because she sympathises with white supremacists and Neo-Nazis.
>
> 5.17 is unfit to belong to the Victorian Parliamentary Liberal Party because she is a Neo-Nazi.
>
> 5.18 [not pressed].
>
> 5.19 is unfit to belong to the Liberal Party because she supports white supremacists and Neo-Nazis.
>
> 5.20 is unfit to belong to the Liberal Party because she holds abhorrent white supremacist and Neo-Nazi views.
>
> 5.21 is unfit to belong to the Liberal Party because she knowingly associates with white supremacists and Neo-Nazis.
>
> 5.22 is unfit to belong to the Liberal Party because she sympathises with white supremacists and Neo-Nazis.
>
> 5.23 is unfit to belong to the Liberal Party because she is a Neo Nazi.

409 Mr Pesutto admitted publication of the media release (and all other pleaded publications) but denied that any of those 20 imputations is carried.

410 In answer to paragraph 5 of the statement of claim Mr Pesutto’s defence dated 29 January 2024 pleaded that he:

> 5.1 admits the Media Release was defamatory of Deeming;
>
> 5.2 denies that the Media Release carries or is capable of carrying any of the imputations pleaded in paragraph 5 of the SOC, but admits that if, contrary to that denial, those imputations or any of them are carried, then they are defamatory of Deeming; and
>
> 5.3 says further that in its natural and ordinary meaning, the Media Release carries and was understood to carry the following defamatory imputation (**Media Release Imputation**):
>
> (a) Deeming, by reason of having been involved in organising, promoting and participating in, and attending, a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto’s leadership.

411 Further, Mr Pesutto admitted that at the time of publication, he did not believe any of the 20 imputations listed above pleaded against him to be true. See paragraph 12 of Annexure B to his defence. He also pleaded that he did not intend to convey any of those 20 imputations, nor did he believe any of them to be conveyed. See paragraph 14 of Annexure B to his defence.

412 Section 10A of the Act requires Mrs Deeming to prove that the publication of each defamatory matter caused, or is likely to cause, serious harm to her reputation. She pleaded (and Mr Pesutto denied) that she has established that proof in respect of the media release, in particulars running to several pages.

The 3AW interview

413 Mrs Deeming alleged, and Mr Pesutto admitted, that he published the 3AW interview on 20 March 2023, an agreed transcript of which was admitted into evidence (Ex A20).

414 It is common ground that the interview was broadcast by 3AW radio at or at about 8.55am on 20 March 2023 to an audience throughout the Melbourne RA1 licence area in Victoria and was also live streamed and uploaded to the 3AW website.

415 A recording of the 3AW interview was also admitted into evidence (Ex A19).

416 Mrs Deeming alleged in paragraph 10 of her statement of claim that the 3AW interview, in its natural and ordinary meaning, was defamatory of her and carried the following defamatory imputations (or imputations that do not differ in substance), namely that she:

> 10.1 helped organise, promote and attended a rally with Nazi activists.
>
> 10.2 had so conducted herself as to warrant being expelled from the Liberal Parliamentary Party by associating with Nazi activists.
>
> 10.3 associates with Nazis.
>
> 10.4 is a Nazi sympathiser.

417 In answer to paragraph 10 of the statement of claim Mr Pesutto’s defence pleaded that he:

> 10.1 admits that the 3AW Interview was defamatory of Deeming;
>
> 10.2 denies that the 3AW Interview carries or is capable of carrying any of the imputations pleaded in paragraph 10 of the SOC, but admits that if, contrary to that denial, those imputations or any of them are carried, then they are defamatory of Deeming; and
>
> 10.3 says further that in its natural and ordinary meaning, the 3AW Interview carries and was understood to carry the following defamatory imputations (**3AW Imputations**):
>
> (a) Deeming, by reason of having helped to organise and promote a protest rally and associating with persons with known links to Nazis, Nazi sympathisers, far right extremists and/or white supremacists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto’s leadership; and
>
> (b) Deeming, by reason of not having left a protest rally that she had helped to organise and promote when neo-Nazis turned up, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto’s leadership.

418 Further, Mr Pesutto admitted that at the time of publication, he did not believe any of the four imputations listed above pleaded against him to be true. See paragraph 12 of Annexure B to his defence. He also pleaded that he did not intend to convey any of those four imputations, nor did he believe any of them to be conveyed. See paragraph 14 of Annexure B to his defence.

The ABC interview

419 Mrs Deeming alleged, and Mr Pesutto admitted, that he published the ABC interview on 20 March 2023, an agreed transcript of which was admitted into evidence (Ex A22).

420 A recording of the ABC interview was admitted into evidence (Ex A21).

421 As set out at [255]–[259] above, it is common ground that the ABC interview was published by television broadcast on *ABC TV* at or at about 9.39am on 20 March 2023 to viewers in Victoria, the Australian Capital Territory, and the other Australian states and territories; that it was also published by streaming on *ABC iView* on 20 March 2023; that in publishing the ABC interview, Mr Pesutto intended and/or authorised and/or it was the natural and probable consequence of his publication that the ABC would publish or republish the sense and substance of the ABC interview on its various media platforms; and that it was uploaded on or around 20

March 2023 to the ABC website.

422 Mrs Deeming alleged in paragraph 14 of her statement of claim that the ABC interview, in its natural and ordinary meaning, was defamatory of her and carried the following defamatory imputations (or imputations that do not differ in substance), namely that she:

> 14.1 supports white supremacists and Neo-Nazis.
>
> 14.2 holds abhorrent white supremacist and Neo-Nazi views.
>
> 14.3 knowingly associates with white supremacists and Neo-Nazis.
>
> 14.4 sympathises with white supremacists and Neo-Nazis.
>
> 14.5 is a Neo Nazi.
>
> 14.6 is a white supremacist.
>
> 14.7 is unfit to sit in the Victorian Parliament because she supports white supremacists and Neo-Nazis.
>
> 14.8 is unfit to sit in the Victorian Parliament because she holds abhorrent white supremacist and Neo-Nazi views.
>
> 14.9 is unfit to sit in the Victorian Parliament because she knowingly associates with white supremacists and Neo-Nazis.
>
> 14.10 is unfit to sit in the Victorian Parliament because she sympathises with white supremacists and Neo-Nazis.
>
> 14.11 is unfit to sit in the Victorian Parliament because she is a Neo Nazi.
>
> 14.12 is unfit to sit in the Victorian Parliament because she is a white supremacist.
>
> 14.13 is unfit to belong to the Victorian Parliamentary Liberal Party because she supports white supremacists and Neo-Nazis.
>
> 14.14 is unfit to belong to the Victorian Parliamentary Liberal Party because she holds abhorrent white supremacist and Neo-Nazi views.
>
> 14.15 is unfit to belong to the Victorian Parliamentary Liberal Party because she knowingly associates with white supremacists and Neo-Nazis.
>
> 14.16 is unfit to belong to the Victorian Parliamentary Liberal Party because she sympathises with white supremacists and Neo-Nazis.
>
> 14.17 is unfit to belong to the Victorian Parliamentary Liberal Party because she is a Neo-Nazi.
>
> 14.18 is unfit to belong to the Victorian Parliamentary Liberal Party because she is a white supremacist.
>
> 14.19 is unfit to belong to the Liberal Party because she supports white supremacists and Neo-Nazis.
>
> 14.20 is unfit to belong to the Liberal Party because she holds abhorrent white supremacist and Neo-Nazi views.
>
> 14.21 is unfit to belong to the Liberal Party because she knowingly associates with white supremacists and Neo-Nazis.
>
> 14.22 is unfit to belong to the Liberal Party because she sympathises with white supremacists and Neo-Nazis.
>
> 14.23 is unfit to belong to the Liberal Party because she is a Neo Nazi.
>
> 14.24 is unfit to belong to the Liberal Party because she is a white supremacist.

423 In answer to paragraph 14 of the statement of claim Mr Pesutto's defence pleaded that he:

> 14.1 admits that the ABC Interview was defamatory of Deeming;
>
> 14.2 denies that the ABC Interview carries or is capable of carrying any of the imputations pleaded in paragraph 14 of the SOC, but admits that if, contrary to that denial, those imputations or any of them are carried, then they are defamatory of Deeming; and
>
> 14.3 says further that in its natural and ordinary meaning, the ABC Interview carries and was understood to carry the following defamatory imputation (**ABC Imputation**):
>
> (a) Deeming, by reason of having attended and been actively involved in the organisation and promotion of a protest on the steps of the Victorian Parliament at which there were speakers with known links with neo-Nazis and white supremacists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

424 Further, Mr Pesutto admitted that at the time of publication, he did not believe any of the 24 imputations listed above pleaded against him to be true. See paragraph 12 of Annexure B to his defence. He also pleaded that he did not intend to convey any of those 24 imputations, nor did he believe any of them to be conveyed. See paragraph 14 of Annexure B to his defence.

The press conference

425 Mrs Deeming alleged, and Mr Pesutto admitted, that he conducted the press conference on 20 March 2023, an agreed transcript of which was admitted into evidence (Ex A24).

426 Mr Pesutto admitted that he published the words uttered by him in the course of the press conference with the intention and knowledge that they would be republished by the media to people in Victoria and the other Australian states and territories, and that such republications were the natural and probable consequence of the convening of it.

427 Mrs Deeming alleged in paragraph 19 of her statement of claim that the press conference, in its natural and ordinary meaning, was defamatory of her and carried the following defamatory imputations (or imputations that do not differ in substance), namely that she:

> 19.1 helped Neo-Nazis by working with them to promote their hateful agenda of vilification and hatred;
>
> 19.2 had so conducted herself in assisting Neo-Nazis to promote their hateful agenda of vilification and hate on the steps of Parliament that she should be expelled from the Victorian Parliamentary Liberal Party;
>
> 19.3 deliberately gave Neo-Nazis a platform on the steps of Parliament;
>
> 19.4 actively participated in a rally and knowingly worked with the key speaker, Kellie-Jay Keen, to promote her Neo-Nazi sympathies of hate and vilification, and promote her white supremacist and ethno-fascist views of hate and vilification;
>
> 19.5 engaged in hateful conduct while a member of the Parliamentary Liberal Party by actively participating in and working with the organisers of a rally who she knew were Neo-Nazi sympathisers;
>
> 19.6 knowingly associated with people who share a platform with Neo-Nazis who peddle hate and division and attack people for who they are;
>
> 19.7 had so conducted herself in staying at a rally attended by Neo-Nazis and then celebrating with the key speakers of the rally who had Neo-Nazi sympathies after ugly scenes had occurred on the steps of Parliament so as to warrant her immediate expulsion from the Parliamentary Liberal Party;
>
> 19.8 had so conducted herself before, during and after a rally at Parliament in associating herself with the key speakers who have shared platforms and endorsed viewpoints of Neo-Nazis so as to warrant her immediate expulsion from the Parliamentary Liberal Party;
>
> 19.9 supports Neo-Nazi's hateful views towards others by her association with Neo-Nazi sympathiser, Kellie-Jay Keen, the key speaker at the Let Women Speak Rally;
>
> 19.10 stands with Neo-Nazis and white supremacists.

428 In answer to paragraph 19 of the statement of claim Mr Pesutto's defence pleaded that he:

> 19.1 admits that the Press Conference was defamatory of Deeming;
>
> 19.2 denies that the Press Conference carries or is capable of carrying any of the imputations pleaded in paragraph 19 of the SOC, but admits that if, contrary to that denial, those imputations or any of them are carried, then they are defamatory of Deeming; and
>
> 19.3 says further that in its natural and ordinary meaning, the Press Conference carries and was understood to carry the following defamatory imputations (**Press Conference Imputations**):
>
> (a) Deeming, by reason of having worked with organisers of a rally with known and established links with people who have Nazi sympathies and who promote white supremacist and ethno-fascist views, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership;
>
> (b) Deeming, by reason of not having left a protest rally that she had helped to organise when neo-Nazis arrived, and not immediately disowning or disassociating from them, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership; and
>
> (c) Deeming, by celebrating her involvement in a protest rally, which she helped to organise with people who have shared platforms and viewpoints with people who promote Nazi views or sympathies, and which was attended by neo-Nazis, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

429 Further, Mr Pesutto admitted that at the time of publication, he did not believe imputations numbered 19.1 to 19.5 and 19.9 to 19.10 listed above pleaded against him to be true. See paragraph 12 of Annexure B to his defence. He also pleaded that he did not intend to convey any of the ten imputations alleged by Mrs Deeming to be carried, nor did he believe any of them to be conveyed. See paragraph 14 of Annexure B to his defence. (He also pleaded as part of his contextual truth defence under s 26 of the Act that if (which he denied) imputations 19.6, 19.7 and 19.8 were carried, then those imputations were substantially true.)

The expulsion motion and dossier

430 The expulsion motion and dossier (or EMD) was admitted into evidence (Ex A176) and is annexed to these reasons as annexure D.

431 Mrs Deeming alleged, and Mr Pesutto admitted, that on around 20 March 2023 he published the EMD.

432 Mrs Deeming alleges that by himself or his agents, Mr Pesutto communicated a copy of the EMD to unknown persons associated with the media outlets *The Australian* and the *Herald Sun* intending and authorising those media outlets to publish the document to the world at large in Victoria, the Australian Capital Territory, and the other Australian states and territories, and that it was published in each of *The Australian* and the *Herald Sun* newspapers on 21 March 2023 and 22 March 2023 respectively on their websites to the world at large, and were downloaded and read by readers throughout Victoria, the Australian Capital Territory, and the other Australian states and territories.

433 In his defence, Mr Pesutto pleaded, among other things, that:

> (1) on 20 March 2023, a copy of the EMD was leaked to (at least) *The Age* by persons unknown to him and without his knowledge or authorisation, and was republished in part on *The Age* website;
>
> (2) on 21 March 2023, after the EMD had been so leaked and republished, and after his office had received inquiries regarding it, his office provided a copy of the EMD to *The Australian* and the *Herald Sun*, the latter of which advised that it already had a copy.

434 Mrs Deeming alleged in paragraph 24 of her statement of claim that the EMD, in its natural and ordinary meaning, was defamatory of her and carried the following defamatory imputations (or imputations that do not differ in substance), namely that she:

> 24.1 had so conducted herself on 18 March 2023 in relation to a public rally that it warranted her expulsion from the Victorian Parliamentary Liberal Party.
>
> 24.2 had so conducted herself in associating with Neo-Nazi activists on 18 March 2023 that it warranted her expulsion from the Victorian Parliamentary Liberal Party.
>
> 24.3 conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by organising, promoting and attending a rally on 18 March 2023.
>
> 24.4 conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by publicly associating with Neo-Nazi activists on 18 March 2023.
>
> 24.5 organised, promoted and attended a rally on 18 March 2023 where Kellie-Jay Keen, a known Neo-Nazi, was speaking,
>
> 24.6 met and published a video with known Neo-Nazis on 18 March 2023.

435 In answer to paragraph 24 of the statement of claim Mr Pesutto's defence pleaded that he:

> 24.1 admits that the [EMD] was defamatory of Deeming;
>
> 24.2 admits that the [EMD] conveyed the imputations set out in subparagraphs 24.1 and 24.3, or imputations that do not differ in substance from those imputations, and that they are defamatory of Deeming; and
>
> 24.3 denies that the [EMD] carries or is capable of carrying any of the imputations pleaded in subparagraphs 24.2, 24.4, 24.5 of 24.6 of the SOC, but admits that if, contrary to that denial, those imputations or any of them are carried, then they are defamatory of Deeming; and
>
> 24.4 says further that in its natural and ordinary meaning, the [EMD] carries and was understood to carry the following defamatory imputations (**Expulsion Motion Imputations**):
>
> (a) Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by organising, promoting and attending a rally where Kellie-Jay Keen (also known as Posie Parker) was the principal speaker, in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists; and
>
> (b) Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by meeting with and publishing a video with Kellie-Jay Keen, Katherine Deves and Angie Jones.

436 Further, Mr Pesutto admitted that at the time of publication, he did not believe imputations numbered 24.5 to 24.6 listed above pleaded against him to be true. See paragraph 12 of Annexure B to his defence. He also pleaded that if (which he denied) imputations 24.2 and 24.4 were carried, then those imputations were substantially true. See paragraph 64 of the defence. He also pleaded that he did not intend to convey imputations 24.2, 24.4, 24.5 and 24.6, nor did he believe any of them to be conveyed. See paragraph 14 of Annexure B to his defence.

The "grouping" of the pleaded grounds letter

437 As I have mentioned, at a case management hearing before the proceeding was reallocated to me, the then docket judge criticised the number of imputations pleaded.

438 As a consequence, Mrs Deeming's solicitors sent a letter dated 4 July 2024 to Mr Pesutto's solicitors "grouping together" the imputations (CA:5), as follows:

> Having reviewed the imputations pleaded in the Statement of Claim, we now confirm the following:
>
> (a) In relation to the Media Release:
>
> i. The Applicant does not press imputations 5.6, 5.12 or 5.18.
>
> ii. The imputations pleaded in paragraph 5 can be categorised into four groups – imputations 5.1 to 5.5 grouped together (**group 1**), imputations 5.7 to 5.11 grouped together (**group 2**), imputations 5.13 to 5.17 grouped together (**group 3**), and imputations 5.19 to 5.23 grouped together (**group 4**).
>
> iii. The imputations within each group capture different gradations of seriousness and alternative meanings for that group.
>
> iv. Imputation 5.5 is the most serious imputation for group 1.
>
> v. Imputations 5.1, 5.2 and 5.3 are each pleaded in the alternative as three distinct less serious meanings in group 1 that can each be carried if the Court does not find that imputation 5.5 is carried.
>
> vi. Imputation 5.4 is pleaded as a less serious alternative to imputation 5.1.
>
> vii. This approach applies in terms to the equivalently worded group 2 to 4 imputations.
>
> viii. Further, group 4 is pleaded as a more serious alternative to group 3, in the event the Court finds the equivalent imputations in groups 3 and 4 differ in substance.
>
> (b) In relation to the 3AW Interview, the Applicant presses each of imputations 10.1 to 10.4.
>
> (c) In relation to the ABC Interview:
>
> i. The imputations can also be categorised into four groups – imputations 14.1 to 14.6 grouped together (**group 1**), imputations 14.7 to 14.12 grouped together (**group 2**), imputations 14.13 to 14.18 grouped together (**group 3**), and imputations 14.19 to 14.24 grouped together (**group 4**).
>
> ii. The imputations within each group again capture different gradations of seriousness and alternative meanings for that group.
>
> iii. Imputation 14.5 is the most serious imputation for group 1.
>
> iv. Imputation 14.6 is a less serious alternative to imputation 14.5.
>
> v. Imputations 14.1, 14.2, and 14.3 are each pleaded in the alternative as three distinct less serious meanings in group 1 that can each be carried if the Court does not find that imputation 14.5 is carried.
>
> vi. Imputation 14.4 is pleaded as a less serious alternative to imputation 14.1.
>
> vii. This approach applies in terms to the equivalently worded group 2 to 4 imputations.
>
> viii. Further, group 4 is pleaded [as] a more serious alternative to group 3, in the event the Court finds the equivalent imputations in groups 3 and 4 differ in substance.
>
> (d) In relation to the Press Conference, the Applicant presses imputations 19.1 to 19.10.
>
> (e) In relation to the Expulsion Motion and Dossier, the Applicant presses imputations 24.1 to 24.6.
>
> The above clarification of the Applicant's pleaded imputations should narrow the issues at trial.

439 In the end, the grouping of the imputations was not of particular significance to the manner in which the parties presented their respective cases. There was considerable merit in Dr Collins's submission that the groupings were confusing. In any event, I have had no regard to the letter.

440 Mrs Deeming also filed a reply dated 12 February 2024 (CA:4), which joined issue with the matters pleaded in the defence; including denying that Mr Pesutto was entitled to rely on the defences of honest opinion (including a raft of particulars of defeasance), contextual truth, public interest and common law qualified privilege. It also alleged additional conduct of Mr Pesutto said to warrant an award of aggravated damages.

ARE THE MEANINGS CARRIED?

Applicable principles

441 Mrs Deeming bears the onus of proving, on the balance of probabilities, that the alleged defamatory imputations were conveyed. That is a question of fact.

442 The principles are well understood and were not in dispute. They have been repeated many times, especially by judges of this Court, in recent years.

443 The Court is required to determine the meaning of the impugned publications objectively, by reference to the standards of the hypothetical ordinary reasonable reader (**ORR**), the ordinary reasonable listener (**ORL**) or viewer (**ORV**), as the case may be.

444 Each is (a) of fair, average intelligence, experience and education; (b) fair-minded; (c) neither perverse, morbid nor suspicious of mind, nor avid for scandal; (d) a person who does not live in an ivory tower, but can and does read between the lines in light of general knowledge and experience of worldly affairs; (e) a person who does not search for strained or forced meanings; and (f) a person who reads the entire matter complained of and considers the context as a whole. See, by way of example only, ***Hanson*** *v Burston* [2023] FCAFC 124; (2024) 413 ALR 299 at 308 [44] (Wigney, Wheelahan and Abraham JJ).

445 The Court must arrive at a single objective meaning, being that which an objective audience composed of ordinary decent persons should have collectively understood the matter to bear. The manner in which the publication was actually understood, and the publisher's intended meaning, is irrelevant to the question of meaning. See, eg, *Lee v Wilson* (1934) 51 CLR 276 at 288 (Dixon J); *Chau Chak Wing* at 646–7 [32]–[33] (Besanko, Bromwich and Wheelahan JJ); *Hanson* at 309 [46] (Wigney, Wheelahan and Abraham JJ).

446 When it comes to interpreting casual mediums, which are conversational or in the nature of conversation, such as media interviews and social media posts and the like, regard must be had to the impressionistic nature of them, where the viewer or the listener watches or listens and then moves on.

447 The task does not involve parsing the publications for a theoretically or logically deducible meaning. Over analysis is thus to be eschewed in favour of an impressionistic approach, of course having regard to the whole of the relevant publication and any relevant context, such as matters of ordinary general knowledge and matters that were put before the viewer or listener. See, for example, *Bazzi v Dutton* (2022) 289 FCR 1 at 9 [29] (Rares and Rangiah JJ) quoting the judgment of Lord Kerr JSC in *Stocker v Stocker* [2020] AC 593 at 605–6 [41]–[43].

448 It is also to be assumed that the ordinary viewer or listener is likely to have watched or listened to such a publication only once, without pausing or going back over it. See ***V'landys*** *v Australian Broadcasting Corp* [2023] FCAFC 80 at [73] (Rares J, with whom Katzmann J and I agreed); ***Chau v Australian Broadcasting Corp*** *(No 3)* [2021] FCA 44; (2021) 386 ALR 36 at 46 [35] (Rares J).

449 As Saini J said in *Banks v Cadwalladr* [2019] EWHC 3451 (QB) at [4], where a publication is intended to be heard (in that case there was a TED talk and a YouTube talk), and not read as text, "it is more appropriately considered in its original broadcast form". He continued (at [6]–[12]):

> The parties could not be more divided as to what they argued was meant by the publications. As is usual, the Claimant's advisers sought to extract the most serious and damaging meaning from the language used by Ms. Cadwalladr while her advisers sought to do the opposite arguing for lower *Chase* level meanings.
>
> As a result, the written and oral arguments advanced in support of the substantially different meanings (specifically, those in relation to the Ted Talk and the Convention Speech - which were transcribed into text documents in the bundles) at times seemed to me to be more like arguments about the construction of a deed concerning the demise of a leasehold interest.
>
> The arguments on both sides involved on occasion going back and forth between different passages in the text version, and reflecting on what the speaker was referring to later by reference to a passage earlier in the text. To take just one example, when Ms. Cadwalladr referred in the Convention Speech to the Russian Government having offered money to Mr. Banks (see Annexe B, para. 14) one of the arguments before me involved going back a few pages in the text to reflect on whether this was really just about the "gold and diamond deals" (see Annexe B, para. 8) which Mr. Banks is said to have been offered in the Russian embassy. A viewer would not do that. They would simply watch the Ted Talk in one go and not, as a lawyer would do, think as follows: when Ms. Cadwalladr refers to Russian offers of money was she referring to gold and diamonds which I can identify by looking back? Are they the same thing as money or was this something else?
>
> The ordinary reasonable viewer of the Ted Talk and the Convention Speech does not have a text before her. She will watch it as an uninterrupted broadcast and is most unlikely to rewind back to an earlier part and slowly examine the language (as if she had the text before her) and then go back to where she stopped earlier and reflect on what the meaning was.
>
> One can readily understand why in disputes as to meaning of language this happens. Lawyers (and I include judges in that category) cannot resist turning any exercise where language is being considered into an exercise in construction of words. That problem is particularly acute when a speech (given and intended to be viewed and heard, and not read) is turned into a text document.
>
> This process diverts one from what should be a simple task in most cases and calls into question whether our normal adversarial processes (pleading, skeleton arguments and oral argument) are the appropriate way in which to resolve disputes as to meaning. The task of the court is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable viewer of the videos (or reader of the tweets) would understand the words bear. The court is to undertake that task without over-elaborate analysis and without adopting too literal an approach to this task. Textual analysis is the exact opposite.
>
> As I told the parties at the hearing, I approached this task by viewing and reading the relevant publications without considering the pleaded case and skeleton arguments. My mind being unpolluted by such materials, I formed a preliminary view as to the meanings. Although I have found the submissions of substantial assistance as a cross- check on that initial view, I was not ultimately persuaded that the meanings forcefully advanced by either party were wholly correct. There were however important parts of each of their cases which reflected or were similar to my own original conclusions.

450 That reasoning was approved by John Dixon J in *Agustin-Bunch v Smith (No 3)* [2023] VSC 277 at [48] ("[There is merit in the judge's suggestion [in the last paragraph quoted above] which I propose to follow … It avoids application of the lawyer's analytical skills in language construction and interpretation and enables the judge to better replicate the experience of the hypothetical viewer").

451 As his Honour went on to say at [50]:

> The hypothetical viewer's interaction with the video is transient and superficially impressionistic but context is important and significant. The hypothetical viewer watched the videos through, possibly to their end, with a casual attention span, uninterrupted by rewinding and reconsideration in a search for meaning … The hypothetical viewer did not have a transcript of the words used or presented and is unlikely to reflect deeply on the meaning of a video … The first impression was likely to be the last and only impression and meaning was not construed by analysis of short statements that were not temporally proximate in the presentation. It must follow that, for the court, textual analysis is inappropriate, notwithstanding that it is, to some extent, unavoidable.

452 I should also say a little about the significance of Mrs Deeming's point that she included within the ambit of her pleaded imputations those "that do not differ in substance". That is intended to pick up the general rule that "there will be no disadvantage in allowing a plaintiff to rely on meanings which are comprehended in, or are less injurious than the meaning pleaded in his or her statement of claim" and that "there will generally be no disadvantage in permitting reliance on a meaning which is simply a variant of the meaning pleaded": ***Chakravarti*** *v Advertiser Newspapers Ltd* (1998) 193 CLR 519 at 546 [60] (Gaudron and Gummow JJ). See too *Chau Chak Wing* at 649–50 [42]–[47] (Besanko, Bromwich and Wheelahan JJ).

The media release

453 In my view, for the reasons set out below, the essence of pleaded imputation 5.15 is conveyed, that is to say the ORR would understand Mr Pesutto to convey that Mrs Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she knowingly associates with Neo-Nazis.

454 I do not accept that it would convey also that she knowingly associates with white supremacists, as pleaded, because that expression is not used in the media release.

455 As in *Chakravarti*, there is no disadvantage or unfairness to Mr Pesutto to find a meaning "less injurious" than, or that is "simply a variant of", the pleaded imputations.

456 The media release commences with two sentences referring to the "abomination" of "neo-Nazi protesters" acting with "violence, prejudice and hate".

457 The fourth sentence turns immediately to Mrs Deeming, and to the fact that she "attended yesterday's rally". The ORR would understand "yesterday's rally" to refer to the rally of neo-Nazi protesters referred to in the first sentence, which occurred "on the steps of the Victorian Parliament". It is true that the first sentence does not refer to a "rally" in terms, but there is no other "abominable" gathering of protestors referred to.

458 In my view, the ORR would understand Mr Pesutto to be saying that Ms Deeming thus "knowingly associates with neo-Nazis".

459 The fifth sentence of the media release asserts that this "issue" is not about free speech "but a member of the parliamentary party" – Mrs Deeming – "associating with people whose views are abhorrent" – which can only be read to refer to "neo-Nazi protestors". It seems to me that there is no other way that the ORR would or could read that sentence – that is, that Mrs Deeming associates with neo-Nazis.

460 It is true that sandwiched between that sentence and the first sentence are words that record that Mr Pesutto discussed with Mrs Deeming her "involvement … in a rally with speakers and organisers who themselves have been publicly associated with … neo-Nazi activists", but even assuming that the ORR might wonder whether Mr Pesutto was suggesting that Mrs Deeming's "association" with neo-Nazi activists was one step removed, she or he would not wonder for long, because the notion is unambiguously dispelled by the fifth sentence – which, as I say, conveys to the ORR unequivocally that she associates with neo-Nazis.

461 And it was because her position was "untenable" that Mr Pesutto said that he was going to move a motion to expel Mrs Deeming as a member of the Parliamentary Liberal Party, so that that the ORR would understand, reading the media release as a whole, that he intended to convey that she is unfit to be a member of the Parliamentary Liberal Party because she knowingly associates with Neo-Nazis.

462 The word "knowingly" does not appear in the media release, but it is obviously conveyed. The ORR would not understand that Mrs Deeming was being accused of an innocent or unwitting association – otherwise why was Mr Pesutto moving for her expulsion?

"Associates" and "associations"

463 Before turning to the 3AW interview, I should say something about Mr Pesutto's frequent use throughout the impugned publications of the words "associate", "associated" and "association".

464 Mr Pesutto was well aware of the fact that "association" is "a flexible word", and that by using the word "you leave yourself open", because he said exactly that to Mrs Deeming at the 19 March meeting (see [183] above). He knew therefore that people could understand the word in different ways depending on the context in which it was used, and that meant that he must have known that he had to take care in using it in close proximity to words like "Nazis" or "neo-Nazis" or "Nazi sympathisers" or the like.

465 Mr Pesutto at various other times in the impugned publications used expressions like "known links" or "publicly associated with" or "in league with". They too are expressions which need to be used with care when using them in close proximity with those words for the same reason, something that he also must have understood. As Lord Devlin said in *Lewis v Daily Telegraph Ltd* [1964] AC 234 at 285 in a passage that has been applied in the cases many times:

> [I]t is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that.

466 The use of loose language provides greater opportunity for the ordinary reasonable reader to infer adverse meaning from the published matter than the use of precise and unambiguous language. See, eg, *Chakravarti* at 574 [134] (Kirby J); and *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 at 50 [68] (White J). As Holroyd Pearce LJ put it in *Lewis v Daily Telegraph Ltd* [1963] 1 QB 340 at 374 (in a passage approved by Hunt CJ at CL in *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158 at 165):

> When persons publish words that are imprecise, ambiguous, loose, fanciful or unusual, there is room for a wide variation of reasonable opinion on what the words mean or connote. The publisher can hardly complain in such a case if he is reasonably understood as having said something that he did not mean.

The 3AW interview

467 The 3AW interview, as has been explained, is more appropriately considered in its original broadcast form (Ex A19).

468 It was played in court, and I have again listened to it for the purposes of preparing these reasons.

469 As I have also explained, the ORL is assumed to listen to the interview in an impressionistic way, once. See *V'landys*; *Chau v Australian Broadcasting Corp*; and *Banks v Cadwalladr* [2019] EWHC 3451 (QB).

470 But, of course, in giving written reasons for judgment, judges must describe in words what the ORL hears, which I will now do.

471 Mr Mitchell introduced the appearance of Mr Pesutto as follows:

> **N Mitchell:** Now as I said, that vote later today for Liberals to expel Moira Deeming from the parliamentary party – she's only been there five minutes – I'll talk to the leader John Pesutto in a moment. There are a lot of things that complicate this. I'd argue Moira Deeming was entitled to be there, though I certainly wouldn't have gone, but did she leave when the Nazis turned up? The political optics are bad: a Liberal MP at a hate rally with Nazis, if it's a hate rally. That's not entirely fair, I'm not defending Moira Deeming, she stands for a lot of things I don't like. I think she's a loose cannon for the Libs but they're going to throw her out. Opposition leader John Pesutto, good morning.

472 In the course of his interview with Mr Mitchell, Mr Pesutto said the following things:

> (1) What Mrs Deeming "did wrong" was to have "associations … with organisers of Saturday's protest to have known links with Nazis, Nazi sympathisers, far right extremists [and] white supremacists" (lines 10–13);
>
> (2) The Nazis that Ms Keen has shared video and interview platforms and thus associated with are Jean-François Gariépy, Richard Spencer, Mark Collett, and Ku Klux Klan leader David Duke (lines 17–22);
>
> (3) Ms Keen has "a long rap sheet" (lines 19–20);
>
> (4) Ms Keen's "history of activism actually has taken her into league with people, with views I cannot accept … as consistent with Victorian values" (lines 30–33);
>
> (5) Mrs Deeming "helped organise and promote it" (being "this rally") with people who had "long rap sheets of association with these people" – which can only be a reference to "Nazis, Nazi sympathisers, far right extremists and white supremacists" (lines 39–41 and 47);
>
> (6) "[Y]ou have a situation … where you have a member of the Liberal team associating with people with these associations" (lines 98–99);
>
> (7) "I know Moira's not a Nazi, but my point is that she's associating with people who are. And that brings them into a place where it's unacceptable for me as a leader and I believe unacceptable for the party" (lines 102–104);
>
> (8) Ms Keen and Ms Angie Jones are Nazi sympathisers (lines 112–115); and
>
> (9) "[A]s alternative Premier I want to make it clear to Victorians that my values, the values of the party I lead are not consistent with Kellie-Jay Keen, never will be. Not consistent with Thomas Sewell or the Nazis who turned up on the steps of Parliament, never will be. I will fight hate speech like that wherever I see it" (lines 125–127);
>
> (10) "I'm not saying [Mrs Deeming] necessarily knew … that these people have known associations with Nazi sympathisers" (lines 134–136).

473 Counsel for Mr Pesutto sought to emphasise that the 3AW interview commences with Mr Mitchell asking him what Mrs Deeming did "wrong" (line 10), and his answer that Mrs Deeming had associations with organisers of the protest, who have known links with Nazis, Nazi sympathisers, far right extremists, white supremacists (lines 11–12).

474 It was submitted that "[t]hat immediately sets the tenor of the interview, and it would be understood by the listener to be the precise conduct alleged to have been engaged in by Mrs Deeming – *association* with organisers who have known *links*" (RCS [5.27]).

475 It was next submitted that "[t]hat is further explained at lines 39-41, where Mr Pesutto explains that the problem is that Mrs Deeming also helped *organise and promote* the Rally *with people who had known associations*".

476 The ultimate submission advanced by his counsel on the meaning conveyed was that "[w]hen the 3AW Interview is considered as a whole, by the standards of the ordinary reasonable person who will have listened to it only once, those are the matters that carry the dominant impression of what Mr Pesutto was saying about Mrs Deeming: she had associated with organisers of the protest who themselves had known links with Nazis, Nazi sympathisers, far right extremists, white supremacists … It is an association with an association that Mr Pesutto was repeatedly emphasising throughout the interview (for example, line 99). At no point was it suggested that Mrs Deeming had *herself* associated with Nazis or Nazi activists (imputations 10.1 to 10.3), much less that she herself *was* a Nazi sympathiser (imputation 10.4)" (RCS [5.28]–[5.29]).

477 Counsel for Mr Pesutto also submitted that it is irrelevant that Mr Pesutto "upon being pressed by Mr Mitchell, identified Mrs Keen as a sympathiser of Nazis (lines 112-113)" (RCS [5.32]).

478 It was further submitted that that was not a matter captured by any of Mrs Deeming's pleaded imputations, because there is a relevant distinction to be drawn between a "sympathiser" (a person who passively shares views with others) and an "activist" (a person who acts on their views).

479 It was submitted that Mr Pesutto's statement that his "point" was that Mrs Deeming was "associating with Nazis" was an "obvious mis-statement" and:

> will have been understood as such by ordinary, reasonable listeners, who will have heard Mr Pesutto say, over and again, that the issue was Mrs Deeming having associated with persons who themselves have associations, including at lines 97-98. Any listener who focused on the mis-statement at line 103, and treated it is over-riding what Mr Pesutto had said over and again in the course of the 3AW Interview (at lines 11-13, 39-41, 46-47, 97-98) would be a person who was avid for scandal; unduly suspicious; searching for strained, hidden, forced or sinister meanings; or jumping to conclusions based upon their own beliefs or prejudices.
>
> (RCS [5.35].)

480 I emphatically reject those submissions.

481 Mr Pesutto said in in terms, "Moira's not a Nazi, but my point is that she is associating with people who are". It is fanciful to imagine that the ORL would have thought to themselves, "oh gosh, Mr Pesutto has just said his point is that Mrs Deeming associates with Nazis, but he didn't mean it".

482 And the words that follow Mr Pesutto's statement that Mrs Deeming is "associating with people who are [Nazis]" – namely that "that brings them [ie Nazis] into a place where it is unacceptable for me as a leader and I believe unacceptable for the party" – would also lead the ORL to have thought that when Mr Pesutto asserted that Mrs Deeming "associates with Nazis" he meant what he said. The ORL would also be under no misapprehension that the Nazis Mr Pesutto said she was associating with were Ms Keen and Ms Jones, because he says so:

> N Mitchell: So, you're saying Kellie-Jay Keen is a sympathiser with Nazis, correct?
>
> J Pesutto: Yes.
>
> N Mitchell: And others are there as well?
>
> J Pesutto: Well certainly her, Angie Jones …
>
> …
>
> And as alternative Premier I want to make it clear to Victorians that my values, the values of the party I lead are not consistent with Kellie-Jay Keen, never will be. Not consistent with Thomas Sewell or the Nazis who turned up on the steps of Parliament, never will be.

483 The ORL would also not conclude that Mr Pesutto misspoke when he said that Mrs Deeming "associates with people who are [Nazis]" because in the answers set out in the immediately above passage, Mr Pesutto identifies precisely who those Nazis are. And that is a repetition of his claim that he was seeking Mrs Deeming's expulsion from the Parliamentary Liberal Party because she associates with Nazis, including Nazis like Ms Keen.

484 Further, and contrary to the submission advanced on behalf of Mr Pesutto, the ORL would think that a person who sympathises with Nazis is a supporter of them.

485 The further dichotomy that Mr Pesutto's counsel sought to construct – drawing a distinction between a Nazi "activist" on the one hand and a Nazi "sympathiser" on the other – is also a distinction without a relevant difference.

486 In my view, the dominant impression that the ORL is left with having listened to the 3AW interview is that Mrs Deeming associates with Nazis and is thus unfit to be a member of the Parliamentary Liberal Party. That is the imputation that I find to be conveyed, which is in essence, or a permissible variant of, pleaded imputation 10.2. (Meanings that are not substantively different, in that they are comprehended in, or are a shade or nuance of, the pleaded meaning are permissible. See, eg, ***Nassif*** *v Seven Network (Operations) Ltd* [2021] FCA 1286 at [80] (Abraham J); ***Stead*** *v Fairfax Media Publications Pty Ltd* [2021] FCA 15; (2021) 387 ALR 123 at 127–8 [15] (Lee J).)

The ABC interview

487 I have also rewatched the ABC interview (which can be accessed as Ex A21).

488 It was agreed that the beginning part of the ABC interview between Mr Rowland and Mr Pesutto is missing from the transcript and the video. It is not clear how much of it was not captured.

489 The recording of the interview commences with Mr Pesutto saying, "It was very concerning, Michael, and the reason I've taken this step is because I believe it's important as Victoria's alternative Premier to set out the values I stand for and the values my party stands for".

490 The "step" is obviously the step to move to expel Mrs Deeming from the Parliamentary Liberal Party.

491 Mr Pesutto next says that the reason he is moving the motion to expel her "is because Moira Deeming not only attended the protest on the steps of parliament but was actively involved in different ways in the organisation and promotion of this protest at which there were speakers who have known links with neo-Nazis and white-supremacists, and I won't have any of it" (lines 4–7).

492 At line 20, in the context of an answer to a question about how confident Mr Pesutto was that the party room would "kick out" Mrs Deeming, he says (at line 20) "we don't stand with neo-Nazis, we don't stand with white-supremacists."

493 At lines 31–41, the following critical exchange occurs. It is critical because Mr Pesutto is asked why he is moving a motion to expel Mrs Deeming, viz:

> **M Rowland**: – ***do you have a view on whether this woman whose views you hold – you find abhorrent, or her appearance at the rally yesterday abhorrent, kicked out from the Liberal Party you lead***?
>
> **J Pesutto**: Uh, Michael, I think all of our viewers are very reasonable and sensible and they will understand that by me moving this motion for the reasons I have outlined, that there are certain unmistakable presumptions that they can draw about what I want to happen in the broader party. The party I lead is a party that's there for all Victorians, we are inclusive, we want to engage with everybody, and I promise everybody watching that the party I lead can be a voice for all of you, for all Victorians. ***And what I'm doing is a statement that we will not tolerate or ever accept any association with neo-Nazis and white-supremacists or anybody who sympathises with them***.
>
> (Emphasis added.)

494 The beginning of the emphasised part of the answer ("And what I'm doing is a statement") would be understood by the ORV to mean "I say". So, in answering the question "do you have a view on whether Mrs Deeming (who Mr Rowland calls "this woman") [should be] kicked out from the Liberal Party", Mr Pesutto says, "we will not tolerate or ever accept any association with neo-Nazis and white-supremacists or anybody who sympathises with them".

495 That is loose language, to be sure, but as the cases say, such looseness provides greater opportunity for the ordinary reasonable reader to infer adverse meaning from the published matter than the use of precise and unambiguous language.

496 In my view, the ORV would understand Mr Pesutto to convey in that exchange with Mr Rowland that "this woman" [Mrs Deeming] should be "kicked out" of the Liberal Party because she (knowingly) associates or sympathises with neo-Nazis and white supremacists.

497 For those reasons, the ABC interview conveys the imputation that Mrs Deeming knowingly associates or sympathises with neo-Nazis and white supremacists and is thus unfit to be a member of the Parliamentary Liberal Party and the Liberal Party (which is along the lines of pleaded imputations 14.15, 14.16, 14.21 and 14.22).

The press conference

498 The press conference took a little over 33 minutes. I have rewatched the recording of it for the purposes of preparing these reasons (which can be accessed at CA:13).

499 Mr Pesutto commences by making it clear that the press conference is about Mrs Deeming; he assumes that the journalists in attendance have seen the media release from the night before regarding her; and then says that he has taken the decision to expel her because she – being the only person to whom the word "anyone" at line 7 can refer – "shares their views … or works with them to help them promote their odious [Nazi] agenda." Later, at lines 12–16, he says that Mrs Deeming "had actively participated with and worked with the organisers of the rally" – which the ORV would take to refer to "the protest which attracted Nazis" at lines 5–6 (nothing else having been yet referred to that resembled a rally).

500 Mr Pesutto submitted in closing (at RCS [5.59]–[5.61]) that that imputation, or something like it, was not conveyed because:

> The use of the word 'help' in relation to promoting an agenda appears at line 8. Mrs Deeming is only introduced at line 12, and her conduct is immediately identified as having 'actively participated with and worked with the organisers of the rally'. She is distinguished in the following sentence (lines 14-16) from the organisers who had such 'known and established links'.
>
> It is clear that Mr Pesutto's assertion is that Mrs Deeming was several steps removed from either having helped or worked with actual neo-Nazis. In particular, there is no assertion anywhere in the Press Conference that Mrs Deeming had any contact at all with the neo-Nazis, much less by way of 'working with them'.
>
> The only use of the word 'help' in relation to Mrs Deeming is that she 'helped organise' the rally, which is contained in a question, and not an answer by Mr Pesutto (line 22 (sic [122]).

501 That is a careless submission, and I reject the proposition that the ORV would understand the dominant impression of the press conference to be that "Mrs Deeming was several steps removed from either having helped or worked with actual neo-Nazis".

502 The submission is careless for these reasons.

503 First, it is not true that "Mrs Deeming is only introduced at line 12". Mr Pesutto commences the press conference at line 3 with the opening line: "[Y]ou've seen my statement from last night … regarding Moira Deeming", which announced that he would be moving to expel her from the Parliamentary Liberal Party.

504 Secondly, it is also not true that "[t]he only use of the word 'help' in relation to Mrs Deeming is that she 'helped organise' the rally, which is contained in a question, and not an answer by Mr Pesutto" (which must be a reference to line 122, not 22). That is not true, because Mr Pesutto says at lines 7–8 that "[i]t will never be acceptable in Victoria for Nazis to get a platform or anyone who shares their views or anyone who works with them to help them promote their odious [Nazi] agenda" – which, as I have explained, would be understood as meaning that it was Mrs Deeming who helped promote an odious Nazi agenda.

505 As Saini J quipped in *Banks v Cadwalladr* [2019] EWHC 3451 (QB), it is not the court's role to scrutinise the transcript of things like press conferences as if one were construing "a deed concerning the demise of a leasehold interest".

506 In that case, as in this case, the competing submissions did rather read as if that was the judge's task.

507 As Saini J explained, it is important to have in mind that the ORV does not have a text before them; they will watch it as an uninterrupted broadcast and not slowly examine the language (as if the text were before them), and then go back to where they had been and reflect on their meaning.

508 In my view, watching and listening to the press conference in that way, the ORV would have understood Mr Pesutto to convey that the organisers of the LWS rally, principally Ms Keen (who was the only person he identified as an "organiser"), had known and established links with or shared platforms and worked with Nazis or people who have Nazi sympathies and who promote white supremacist views and ethno-fascist views, to help them promote their odious agenda, because he says those things, or a combination of those things, repeatedly. At the risk of doing precisely what Saini J cautioned against, I refer in that regard in particular to the transcript of the press conference at annexure C to these reasons at lines 15–16, 40–41, 65–66, 74–75, 108–110, 147–149, 238–240 and 418–420.

509 At lines 292–294, Mr Pesutto referred to Ms Keen in particular, stating that she "has a rap sheet of association on the public record with people known to be fascist, including people like David Duke, former head of the Klu (sic) Klux Clan …". (It has been conceded that he was wrong about Mr David Duke).

510 The ORV would have understood Mr Pesutto to say that Mrs Deeming knew that Ms Keen had known and established links with or shared platforms and worked with people who have Nazi sympathies, promote white supremacist views and ethno-fascist views, and helped promote their odious agenda, because in answer to the question "[i]s it plausible that Ms Deeming was unaware of [those] extremist links of the organisers?", Mr Pesutto replied, "I don't think it's open to me to be satisfied that Moira didn't know about their history" (lines 287–290).

511 In my view, a permissible variation of pleaded imputation 19.4 is carried – and that the dominant impression carried by what Mr Pesutto said at the press conference is that Mrs Deeming participated in a rally and knowingly worked with Ms Keen and other organisers to help them promote their odious Nazi agenda and their white supremacist and ethno-fascist views.

The expulsion motion and dossier

512 Mr Pesutto pleads in his defence at paragraph 24.4 that the EMD carries the following imputations:

> (a) Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by organising, promoting and attending a rally where Kellie-Jay Keen (also known as Posie Parker) was the principal speaker, in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists.
>
> (b) Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by meeting with and publishing a video with Kellie-Jay Keen, Katherine Deves and Angie Jones.

513 In his defence, Mr Pesutto admitted that imputations 24.1 and 24.3 pleaded by Mrs Deeming are carried by the EMD, viz:

> 24.1 Deeming had so conducted herself on 18 March 2023 in relation to a public rally that it warranted her expulsion from the Victorian Parliamentary Liberal Party.
>
> 24.3 Deeming conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by organising, promoting and attending a rally on 18 March 2023.

514 Mr Pesutto submitted, and I agree, that in practical terms, there are no differences between imputations 24.1 and 24.3 on the one hand, and expulsion motion imputations (a) and (b) pleaded by Mr Pesutto on the other (RCS [5.99]).

515 In my view, the other pleaded imputations are not carried. They are each premised on the notion that the ORR would understand the authors of the document to convey that Ms Keen (or Ms Deves or Ms Jones) is a neo-Nazi activist or that Mrs Deeming has any associations with neo-Nazi activists. In my view, an ORR would not understand the EMD to convey those things.

ALL MEANINGS CARRIED ARE DEFAMATORY

516 Mr Pesutto admitted in his defence that, if carried, each of the imputations pleaded by Mrs Deeming in her statement of claim is defamatory of her. See his defence at paragraph 5.2 (in respect of the media release); 10.2 (in respect of the 3AW interview); 14.2 (in respect of the ABC interview); 19.2 (in respect of the press conference); and 24.2 (in respect of the EMD).

517 Mr Pesutto denied, however, that the five publications sued upon caused, or were likely to cause, serious harm to Mrs Deeming's reputation. I now turn to consider that issue.

HAS MRS DEEMING PROVED THAT THE PLEADED PUBLICATIONS CAUSED OR WERE LIKELY TO CAUSE SERIOUS HARM TO HER REPUTATION?

The law

518 Section 10A(1) of the Act provides: "It is an element (the ***serious harm element***) of a cause of action for defamation that the publication of defamatory matter about a person has caused, or is likely to cause, serious harm to the reputation of the person".

519 Section 1 of the *Defamation Act 2013* (UK) is similar and relevantly provides: "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant".

520 As judges have observed on many occasions, because of the similarity between the serious harm provisions, English cases can be useful in interpreting the Australian equivalents.

521 Section 10A(1) of the Act places the onus upon an applicant to prove as a necessary element of the cause of action that the relevant publication has caused or is likely to cause serious harm to his or her reputation.

522 The starting point under s 10A is that the defendant is responsible only for harm to a claimant's reputation that is caused by the defamatory publication sued over, not for harm caused by other publications or other causes.

523 But where there were other publications (like newspaper articles and TV news reports) published at and around the same time, and it is thus impossible to isolate the harm that one particular publication has caused, then as Applegarth J said in ***Peros*** *v Nationwide News Pty Ltd* ***(No 3)*** [2024] QSC 192 at [75]:

> [i]n such a case, in which neither the claimant nor the court can isolate the harm caused by the subject publication, a plaintiff may choose to sue over one publication that is alleged to have caused, along with other publications, indivisible damage to reputation. The combined and indivisible harm may be as a result of publications to the same effect by the same defendant or by other publishers. The claimant may seek to invoke another general principle that renders a defendant liable in tort where its wrong was "a cause" or materially contributed to damage that is indivisible. In those circumstances, it is sufficient that the wrong, along with other causes, caused the same loss or damage.

524 Actual serious harm, or the likelihood of serious harm, to the plaintiff's reputation may also be established by inference from other facts, including the nature of the publication and the imputations it contains.

525 A plaintiff may rely on inference and, if the inference is strong enough, serious harm may not be in issue. And in the case of mass media publications, where very serious defamatory allegations are found to have been conveyed, that "may render the need for evidence of serious harm unnecessary", although that will always depend on the circumstances. See *Peros (No 3)* at [81].

526 As Lord Sumption (with whom Lords Kerr, Wilson, Hodge and Briggs JJSC agreed) explained in *Lachaux v Independent Print Ltd* [2020] AC 612 at 623–4 [14]:

> Secondly, section 1 [of the *Defamation Act 2013* (UK)] necessarily means that a statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it "has caused or is likely to cause" harm which is "serious". The reference to a situation where the statement "has caused" serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is "likely" to be caused. In this context, the phrase naturally refers to probable future harm. Ms Page QC, who argued Mr Lachaux's case with conspicuous skill and learning, challenged this. She submitted that "likely to cause" was a synonym for the inherent tendency which gives rise to the presumption of damage at common law. It meant, she said, harm which was *liable* to be caused given the tendency of the words. That argument was accepted in the Court of Appeal. She also submitted, by way of alternative, that if the phrase referred to the factual probabilities, it must have been directed to applications for pre-publication injunctions quia timet. Both of these suggestions seem to me to be rather artificial in a context which indicates that both past and future harm are being treated on the same footing, as functional equivalents. If past harm may be established as a fact, the legislator must have assumed that "likely" harm could be also.

527 Further, "a relevant and potentially significant factor when deciding whether publication has caused serious harm to reputation is the scale of publication or, putting it another way, the total number of publications". See, by way of example only, *Banks v Cadwalladr* [2023] KB 524 at 544 [52] (Warby LJ).

528 But, as the cases also often remind us, it is not a numbers game, because very serious harm to a person's reputation can be caused by limited publication of a defamatory statement.

529 Serious harm may be shown by general inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. That brings into play not only the scale of publication, but whether the statement complained of is likely to have come to the attention of anyone who knew the claimant, and the seriousness of the allegations complained of.

530 Further, it is relevant to consider the risk of percolation of defamatory allegations, especially on social media, because in such cases it may be very hard to identify unknown publishees who thought less well of a claimant. See *Wilson v Mendelsohn* [2024] EWHC 821 (KB) at [241] (Richard Parkes KC).

531 Third party communications and comments posted online by those who have watched, heard or read the relevant publication can be evidence of reputational harm, to the extent they can be said to be a natural and probable consequence of the publication complained of. See *Economou v de Freitas* [2016] EWHC 1853 (QB); [2017] EMLR 4 at 182 [129] (Warby J); ***Riley*** *v Sivier* [2022] EWHC 2891 (KB); [2023] EMLR 6 at 215–17 [103] (Steyn J); *Barron v Vines* [2016] EWHC 1226 (QB) at [44]–[46] (Warby J).

532 Where a respondent publishes a specific allegation of a seriously damaging kind which would ordinarily lead to an inference of serious reputational harm, the fact that the recipients are politically opposed or already dislike the plaintiff does not mean serious harm is not caused. In *Banks v Cadwalladr* [2023] KB 524 at 545 [54], Warby LJ (with whom Singh LJ and Dame Victoria Sharp P agreed) considered a submission by the appellant's counsel that the primary judge had erred because she had failed to appreciate that "there is 'a world of difference' between thinking that a public figure is wrong on an important political issue and alleging that he is 'the law-breaking stooge of a hostile … foreign government'", and that "[t]he allegations in the [impugned publications] were new and particular allegations which would make any reader, even one with an existing adverse view of the claimant, think substantially the worse of him".

533 Having recorded that submission, Warby LJ continued at 545–6 [55]–[56]:

> Where a defendant publishes a specific allegation of a seriously damaging kind in circumstances which would ordinarily lead to an inference of serious reputational harm the fact, if it be so, that those to whom that allegation is published are politically opposed to the claimant or dislike him or have a generally low opinion of him for some other reason is not a proper basis on which to reject that inference. Such an approach would be at odds with well-established and salutary principles. A person's reputation is not a simple question of whether they are liked or disliked. Nor is reputation a single indivisible whole, it is composed of sectors. At common law it is clear that evidence of bad reputation must be confined to the sector of the claimant's character relevant to the libel: see *Gatley on Libel & Slander*, 13th ed (2022), at para 34-083 and cases there cited. If it were otherwise a person who was widely disliked or had a bad reputation in one sector of their reputation would find it hard to succeed in a defamation claim whatever grave falsehood was published about them. That would be unprincipled and contrary to the public interest.
>
> It is for this reason, I believe, that judges of the Media and Communications List have consistently, and in my view correctly, rejected arguments to the effect that a serious allegation of specific wrongdoing does not cause serious harm if the audience dislikes the claimant for some other reason. In *Barron v Collins* [2017] EWHC 162 (QB) at [56] I held that it does not follow from the fact that a publishee is a political opponent of the claimant, that they will think no worse of the claimant if told that he or she has covered up sexual abuse. In *Monroe v Hopkins* [2017] 4 WLR 68 at para 71(8) I accepted the submission that "if someone is hated for their sexuality or their left-wing views, that does not mean they cannot be libelled by being accused of condoning the vandalisation of a war memorial". In *Turley v Unite the Union* [2019] EWHC 3547 (QB) the allegation was one of dishonest submission of an application to join the union at a concessionary rate (see para 100). At para 114(iii), Nicklin J observed that proof that readers of the offending words "held some pre-existing hostility towards the claimant" on political grounds "cannot lead to the conclusion that such a reader would discount what they read about the claimant". The point is familiar to judges and practitioners in this field. It was made to Steyn J by the claimant's counsel at the trial and it does not appear to have been in dispute. In *Riley v Sivier* [2023] EMLR 6 at paras 114–115, a judgment handed down the month after her decision in this case, Steyn J herself cited and applied the reasoning in *Monroe* at para 71(8).

See too ***Greenwich*** *v Latham* [2024] FCA 1050 at [168]–[172], and my discussion there about *Riley* at 215–17 [103] (Steyn J).

534 In this case, Mr Pesutto accepted, consistently with the principles set out above, that relevant considerations when determining whether a claimant has established the serious harm element will normally include the gravity or seriousness of the defamation; the extent of publication; who the statements were published by and to; the inherent probabilities; and evidence of the actual impact of the publications (RCS [12.19]).

The evidence of Mr Campey

535 Mrs Deeming filed two expert reports by Mr Campey: an initial report dated 29 May 2024 and a supplementary report dated 12 August 2024.

536 Mr Campey is the principal of a business called "Social Media Evidence Experts". In that capacity, he has conducted over 1000 online investigations, forensically collecting and preserving online data, and analysing it for use in legal proceedings.

537 As Mr Campey agreed in cross-examination, his reports sought to:

(a) estimate the number of people Mr Campey opined were likely to have seen the publications sued on by Mrs Deeming;

(b) generate estimates of the number of mentions on social media of particular words and combinations of words at particular points of time; and

(c) estimate the number of people who engaged with the publication sued on.

538 By the time of preparing the supplementary report, Mr Campey had received subpoenaed material from some, but not all, of the publishers of the websites in question.

539 Mr Campey used "Meltwater", a commercial online platform used for monitoring and analysing social media, commercial and public broadcast and print media, alternative news outlets and other online data sources, in order to estimate views of publications. In cross-examination, Mr Campey accepted that Meltwater was "an approximate tool at best" and that he would always prefer to have statistics held by publishers of the websites as to the number of visitors that each of their webpages received.

540 In closing submissions, counsel for Mr Pesutto submitted, and I agree, that Mr Campey was an honest witness and that it was to his credit that he admitted in cross-examination to what counsel described as "a litany of errors and shortcomings in his reports". I agree that those shortcomings were so extensive that the reports were ultimately of "extremely limited value" to the court (RCS [10.20]).

541 Mrs Deeming submitted that Mr Campey's second report, however, helpfully summarised the actual readership where available from the subpoenaed material and the viewership figures from social media that Mr Campey collated and reviewed which he sourced from objective documentation.

542 Mr Pesutto accepted that Mr Campey's collation of the subpoenaed data in his second report may be of some assistance, but directed the court to Schedule B of his closing submissions where that data was set out.

543 Counsel for Mrs Deeming accepted that criticism was levelled at Mr Campey's methodology in estimating the likely reach of online news content in his first report, but submitted that that evidence was nevertheless useful in illustrating the accessibility and "potential audience" of material republishing or reporting on the alleged defamatory matters, which was said to be highly relevant to the assessment of the likelihood of harm from such a "public defamation" (ACS [517]).

544 In her closing address, Ms Chrysanthou confirmed that, following receipt of the subpoena material, the remaining purpose of Mr Campey's evidence was its relevance to the "percolation" or "grapevine" effect, which goes to the likelihood of the impugned publications causing serious harm to Mrs Deeming's reputation. Beyond this, however, Mrs Deeming did not substantially rely on Mr Campey's expert reports.

545 In the end, I am of the view that Mr Campey's reports are of no real assistance to the question of serious harm or, for that matter, to any other issue in the proceeding, given the existence of the subpoena material. That material, as I explain when considering damages below at [809]–[811], readily establishes that publication of each of the impugned publications was extensive.

Consideration of serious harm issue

546 The imputations that I have found to have been carried are very serious ones. In my view, as Mrs Deeming submitted (at ACS [705]), they were inherently likely, using mass media to communicate a message to the general public in Victoria, to cause serious harm to Mrs Deeming's reputation. That is especially so in circumstances where the leader of her own Parliamentary party was moving for her expulsion from it.

547 It is true that, before the publication of the media release, a number of tweets on Twitter had been published which accused Mrs Deeming of being a "disgrace" and the like for siding with Nazis. There was also some mainstream media coverage of the Nazis at the rally. The evidence relied on by Mr Pesutto in that regard is summarised at RCS [14.5]. But the mainstream media did not allege that Mrs Deeming was associated with Nazis or sympathised with their cause, or that her conduct at the LWS rally warranted her expulsion. Mr Pesutto certainly believed that to be the case, because he said to Mrs Deeming at the 19 March meeting (Ex A2, lines 37–40) that "if you look at the way the media is reporting it they are referring only to Katherine [Deves] and they haven't talked about you yet". If "media" is taken to mean "mainstream" media, then he was correct.

548 Further, Mrs Deeming gave evidence that she did not recall receiving any calls from journalists on 18 March about the LWS rally, and that she did not recall receiving any media calls until after the publication of the media release (CB:2, 81[78]).

549 Many of Mrs Deeming's witnesses also gave unchallenged evidence that they had not seen any media reporting connecting Mrs Deeming to the LWS rally until the publications. The evidence is summarised at ACS [707]–[709].

550 In any event, it is quite apparent that much of the hate-filled social media and other communications directed at and to Mrs Deeming that followed the publications were a result of the impugned publications (as I explain at [590]–[614] below).

Mrs Deeming's reputation

551 Mr Pesutto sought to make the case that Mrs Deeming did not suffer, or was not likely to suffer, serious harm to her reputation, because, so he swore in his 27 May 2024 affidavit (CB:30), she already had a "bad reputation … particularly for giving succour to hateful and/or extreme social or political views".

552 He swore that he knew "of no other person with such a bad reputation who has been allowed into the [Liberal] Party."

553 It is as well to set out the relevant paragraph of his 27 May 2024 affidavit (paragraph 45) in full:

> In my opinion, based on my experience as Leader of the Party (which caused me to mix with and meet a variety of people, including politicians and members of the broader community), while it was clear some people loved Mrs Deeming and shared her views on those issues (in my view, a minority), on the whole, in the circles in which I moved including the more mainstream parts of the community I was trying to attract to support the Party (in my view, the vast majority), Mrs Deeming had a bad reputation, particularly for giving succour to hateful and/or extreme social or political views. I know of no other person with such a bad reputation who has been allowed into the Party.

554 He was cross-examined about that evidence as follows (T666.4–T667.24):

> [MS CHRYSANTHOU:] I just want to direct your attention back to paragraphs 44, 45, and 46. I just want to suggest to you that paragraph 44 is not correct - - -?---No. I stand by those paragraphs, your Honour.
>
> - - - and the opinion you express at paragraph 45 is not true, in the sense that you have said that:
>
> > *She had a bad reputation, particularly for giving … succour to hateful and/or extreme social or political views.*
>
> ?---No. I stand by that, your Honour.
>
> And I also suggest to you that the last sentence of paragraph 45 is not true?---It's my view, your Honour; I am sure people would contest it, depending on their view. But it's certainly my view.

555 I then intervened:

> [O'CALLAGHAN J]: Well, do you know anything – can you point to any example of Mrs Deeming having given:
>
> *…succour to hateful and/or extreme social or political views*
>
> ?---Your Honour, that's a general observation of what I consider to be Mrs Deeming's, I will call it, notoriety in the community. I am not trying to suggest in that paragraph that that's – that's my assessment of Mrs Deeming, necessarily.
>
> [O'CALLAGHAN J:] Did anyone ever tell you that they thought that she had a reputation for giving succour to such things?---Not as your Honour has precisely articulated it.
>
> [O'CALLAGHAN J:] No. It's the way you've - - -?---But – but there would be too many - - -
>
> [O'CALLAGHAN J:] But it's the way you've articulated it?---Yes. I - - -
>
> [O'CALLAGHAN J:] You're saying that she had a bad reputation for those things, and I am asking you did anyone ever say anything to you along those lines?---And what I would say is there were numerous conversations over a long period – I can't recall specific conversations, but what I can say to your Honour – your Honour is that this was not, if you like, a – a – a subject that was rare in political circles when we're – in – in Liberal Party circles when we're talking about Mrs Deeming. And what I mean by that is the conversations I was privy to about Mrs Deeming were always in relation to the controversy that seemed to surround her; whether that's fair or not, but that was – that was my general assessment – that Mrs Deeming was seen in that vein. And whether you take it from - - -
>
> [O'CALLAGHAN J:] What? Seen to be controversial?---Yes. And – and – and seen to be a, if you like – again, fairly or unfairly – a magnet for that kind of controversy. And it's why – I think you saw media - - -
>
> [O'CALLAGHAN J:] Why does that mean she has:
>
> > *…a bad reputation … for giving succour to hateful and/or extreme social or political views*
>
> ? ---That's my general view of how she – how Mrs Deeming was seen, certainly, in many circles. Now, there would be a contrary – a countervailing view, I'm sure, in parts of the party that would be devotees of Mrs Deeming; I accept that. But, in my view, there was also another view that Mrs Deeming was as I've described.
>
> [O'CALLAGHAN J:] So rather than her having a bad reputation, you say that some people thought she did that, ie, gave succour to hateful/extreme political views?---I think it was a pretty widespread view. It's not a universal view. But, in my view, it was a widespread view about Mrs Deeming.

556 Ms Chrysanthou then asked, "I want to suggest to you that that's just not true?" and Mr Pesutto replied, "… I reject that, your Honour".

557 I have no hesitation in saying that Mr Pesutto's evidence at paragraph 45 of his first affidavit is untrue. Having said, on oath, that "in the circles in which I moved including the more mainstream parts of the community I was trying to attract to support the Party (in my view, the vast majority), Mrs Deeming had a bad reputation, particularly for giving succour to hateful and/or extreme social or political views", when pressed about the allegation, he was unable to provide a skerrick of evidence to support it. That is a shameful state of affairs, because the allegation – which went as far as saying that he "[knew] of no other person with such a bad reputation who has been allowed into the Party" – was self-evidently calculated to defeat Mrs Deeming's case that she had, or was likely to have, suffered serious harm as a consequence of the impugned publications.

558 The allegation that Mr Pesutto made that Mrs Deeming had a bad reputation also flies in the face of objective facts, including most obviously the fact that it was Mr Pesutto himself who proposed that Mrs Deeming be elected to the position of Party Whip in the Legislative Council in December 2023. (Mr Mundine explained in his evidence that the role of Whip "is a very powerful position which carries authority within the party" and that "one is not appointed … unless the party (and the party leader) thinks highly of the candidate in relation to their integrity and trustworthiness" (CB:17, 224–225[15])).

559 Mr Pesutto also accepted that at the time of the "Western Metropolitan Meet & Greet" that he attended with Mrs Deeming in February 2023, he was happy to be pictured with her on the event flyer (T652.35); had no concerns about being photographed with her at the event (T652.46-47); and agreed that he had a conversation with Mr Mundine about Mrs Deeming in positive terms (T653.18–22).

560 Mr Pesutto was also cross-examined about paragraph 44 of his 27 May affidavit, which read:

> However, after several months as Leader of the Party, it was apparent to me that Mrs Deeming's views on social and political issues (most notably, abortion and transgender related issues) were notorious, controversial and regarded as hateful by some, and she had a mixed reputation in the Parliament.

561 I asked him, "Can you point to something that Mrs Deeming said that, in your view, represents a hateful view concerning abortion or transgender-related issues?" This was his answer:

> There was – and I'm not saying I shared – that I had that view myself. What I would say is that things like Mrs Deeming's inaugural speech, which for the most part I've said in my affidavit was a very good speech, but for some reason the part at the end, which dealt with some of these issues, was all the media and people were talking about, for the most part. So, it was that, but, your Honour, it was more – my comments in relation to that affidavit – that paragraph of my affidavit – are more in relation to what I was seeing in terms of how we were being perceived, and how Mrs Deeming was being perceived, in my view. Not just – I would actually go further than the months as leader, but in the lead-up to the election itself there was significant media and commentary from people such as Daniel Andrews.
>
> (T662.44–663.6)

562 It is difficult to know what to make of that, but whatever it means, it is clear that Mr Pesutto was unable to point to anything to make good his sworn assertion that "it was apparent to me that Mrs Deeming's views on social and political issues (most notably, abortion and transgender related issues) were notorious, controversial and regarded as hateful by some, and she had a mixed reputation in the Parliament".

563 In my view, paragraph 44 of his 27 May affidavit is also untrue.

564 Tellingly, the only mention of paragraphs 44 and 45 of Mr Pesutto's first affidavit in his counsel's written closing submission is in a single footnote (numbered 313) said to support the following proposition that in some circles Mrs Deeming has a **good** reputation (at RCS [13.14]–[13.15]):

> Mrs Deeming filed extensive evidence from various reputation witnesses, including some members of Parliament and others from within her own political circles, church groups and women's rights advocates, which indicated that Mrs Deeming had a good reputation for various matters within the circles within which they move.
>
> Mr Pesutto accepts that, within those particular circles, prior to the Publications, Mrs Deeming had a good reputation.

565 Footnote 313 reads:

> That is consistent with paragraphs 44 and 45 Mr Pesutto's first affidavit, where he said: '*based on my experience as Leader of the Party (which caused me to mix with and meet a variety of people…*' I formed the view that Mrs Deeming '*had a mixed reputation within the Parliament*', and candidly acknowledged that both inside and outside of Parliament '*some people loved Mrs Deeming and shared her views on [controversial social and political] issues*'.

566 Mr Pesutto persisted with the submission that "in other circles" Mrs Deeming "was a polarising public figure, so much so that articles had been written about the extent to which she had been publicly vilified for her views." The evidence, it was submitted, was "overwhelming", and was summarised in closing submissions as follows (at RCS [13.17]):

> (a) Ms Staley, Ms Crozier and Mr Pesutto's other witnesses, and even some of Mrs Deeming's own witnesses' evidence in their affidavits, established that Mrs Deeming was a figure of controversy.
>
> (b) Mrs Deeming's own witnesses loved her precisely because she was 'courageous', 'brave', and 'said things which other people were too afraid to say'.
>
> (c) Ms Wong's evidence was that there is a 'culture war' going on in Australia between, on the one hand, women's rights advocates (described by Ms Wong as 'David') and trans-rights advocates and their supporters, including large parts of the mainstream media, Government and academia (described by Ms Wong as 'Goliath'), which necessarily affects the way controversial advocates in those spaces are perceived.
>
> (d) Other political leaders, including then Premier Daniel Andrews and the Greens Leader Samantha Ratnam, had described Mrs Deeming or her views as, among other things, 'hateful'.
>
> (e) Numerous articles and social media posts were properly admitted in evidence, and established that there was a raft of material in the public domain before the publication of the Publications to the effect that:
>
> > (i) Mrs Deeming was considered 'too extreme' by the Prime Minister's office to be suitable for pre-selection for a seat in the House of Representatives;
> >
> > (ii) in mid-2022, when Mrs Deeming was first pre-selected, Mrs Deeming and various of her views were regarded by some (and had been described by the then Premier and leader of the Greens) as 'hateful' and 'extreme';
> >
> > (iii) Mrs Deeming's maiden speech in February 2023 had been the subject of strident criticism for the extreme views she expressed, and she was then criticised publicly following the release of the FOI documents dating back to the time when she was a member of the Melton City Council;
> >
> > (iv) Mrs Deeming had been 'publicly vilified' in an 'onslaught of tabloid style articles' and the media was 'attacking and inciting' hatred, and she had been described as 'utterly vile';
> >
> > (v) Mrs Deeming's reported statements regarding the Safe Schools program had gained notoriety by the fact that on 11 March 2023, only a week before the Rally, Dr Bach was asked about Mrs Deeming's 'paedophilia apologists' comments' on Joy FM; and
>
> (f) even Mrs Deeming conceded her perceived views on social issues were controversial, agreeing during cross-examination that some of her views concerning the merits of the Safe Schools program, and trans and gender diverse people, were controversial, even within the Party

567 I do not accept that Mrs Deeming had or has a "bad reputation" or a "damaged" reputation. The evidence established that she, like all politicians, has her detractors on the other "side" of politics, some of whom, like Mr Andrews and Ms Ratnam, called her "hateful". That may be a reflection of what nowadays passes for political debate, but it is not, as Mr Pesutto's counsel sought to contend, **evidence of the fact** that Mrs Deeming has hateful views or gives succour to them.

568 It can be accepted that Mrs Deeming's expressed views on such things as the preservation or reinstatement of biological sex-based rights and her opposition to medical transitioning practises used on gender non-conforming, autistic and gay minors are "controversial" are "polarising" in the sense that other political constituencies disagree with her, often strongly. But that is not the same thing as saying that she has a "bad reputation".

569 In any event, Mrs Deeming adduced a large amount of unchallenged evidence from many witnesses to the effect that she did not have a negative reputation, including for having hateful or fringe or extreme views, or for giving "succour" to such views. Evidence along those lines and evidence of her good reputation was given by Ms Clark in her affidavit (CB:3) at [7]–[8]; Ms Dennis in her affidavit (CB:5) at [5]; Mr Hodgett in his second affidavit (CB:13) at [9]; Ms Heath in her first affidavit (CB:9) at [4]–[6]; Mr McCracken in his second affidavit (CB:16) at [12]–14]; Mr Riordan in his second affidavit (CB:21) at [13]; Mr Smith in his second affidavit (CB:24) at [13]; and Mr Wells in his second affidavit (CB:28) at [9].

570 Elsewhere in Mr Pesutto's closing submission, a more limited variant of his contention at paragraphs 44 and 45 of his affidavit was propounded – namely, that "**the relevant sector** of Mrs Deeming's reputation … extends to her reputation for holding, expressing, and giving succour to controversial or extreme social or political views".

571 The cases have long said that to be relevant to the assessment of damages, evidence of misconduct or misbehaviour or the like, must be relevant to an assessment of the applicant's reputation in the "sector" relevant to the defamatory imputations. The same rule is now relevant to the question of evaluating the question of serious harm under s 10A of the Act.

572 As Lord Denning said in ***Plato Films*** *Ltd v Speidel* [1961] AC 1090 at 1139, a good example of what is meant by that rule is *Wood v Cox* (1888) 4 TLR 652 at 656:

> There a jockey had been accused of "pulling" a horse called Success. It was said that "he nearly pulled his head off." He sued for damages. Lord Coleridge C.J. admitted evidence of four officials of the Jockey Club who gave evidence of the plaintiff's bad character for foul riding and not trying to win.

573 As Lord Denning went on to say in a passage oft quoted (at 1140):

> When evidence of good or bad character is given, it should be directed to that sector of a man's character which is relevant. Thus, if the libel imputes theft, the relevant sector is his character for honesty, not his character as a motorist. And so forth. It is for the judge to rule what is the relevant sector.

574 Another example that helps explain the rule is ***O'Hagan*** *v Nationwide News Pty Ltd* (2001) 53 NSWLR 89.

575 In that case, the imputation alleged to be conveyed was that the plaintiff police officer "had arranged with another person, for the price of $10,000.00 to have a third person murdered".

576 The plaintiff's case was conducted on the basis of his good reputation as a police officer. The defendant publisher argued that the plaintiff's reputation was such that he had no reputation to lose and sought to mitigate damages by leading evidence of bad reputation as a police officer in three specific areas of policing where he had pleaded guilty to charges of misconduct, pleading as follows:

> The plaintiff had at the time of publication of the matter complained of a reputation in the New South Wales Police Service, the National Crime Authority and the Australian Federal Police as:
>
> - A policeman who had pleaded guilty to two NSW Police Service departmental charges of misconduct;
> - A policeman who had been suspended from duty in 1988 after being charged with conspiracy to pervert the course of justice;
> - A person who fabricated evidence against persons who had been charged with criminal offences; and
> - A person who was generally dishonest and corrupt.

577 The trial judge admitted evidence of the plaintiff's reputation to that effect, reasoning:

> There is, in my opinion, a substantial degree of approbation and reprobation on the part of the plaintiff in this submission. The plaintiff having chosen to conduct his case on the basis of good reputation (as occurred in this case) as a police officer, when faced with credible evidence of bad reputation cannot be heard to say that this aspect of his case is of no importance — and claim that the damage to reputation he suffers rests wholly in a different and separate sector of his life.

578 The appeal from admission of that evidence was dismissed. As Stein JA explained in reasoning similar to that of Meagher JA and Brownie A-JA at 96 [31]–[32]:

> The imputation in this appeal was described by counsel for the appellant as referring to the sector of 'activities of violence', however the gravity of the imputation extended beyond such an artificial construct to his reputation in the sector addressing his conduct as a police officer. Indeed, as noted by Meagher JA, the gravity of the imputation is in part due to the appellant's position as a police officer.
>
> The appellant had been a policeman for over 35 years, members of his family were police officers, and indeed the majority of the witnesses he called at trial were serving or former police officers. The police service formed his dominant life force. The appellant conducted his case, as noted by the trial judge "on the basis of good reputation… as a police officer". It follows that the sector identified by the appellant as relevant, that area in which he felt his reputation was damaged, was his conduct as a police officer.

579 On the other hand, in *Australian Broadcasting Corp v* ***McBride*** (2001) 53 NSWLR 430, which was decided one month after *O'Hagan's* case, the NSW Court of Appeal (Beazley JA, Ipp A-JA and Fitzgerald A-JA) held that where the relevant sector of the plaintiff's reputation for the purposes of the proceedings was his reputation as a medical practitioner dedicated to the well-being of his patients, any reputation for falsifying results of scientific experiments was not relevant: see *McBride* at 432 [1]; 438–9 [37]–[39]; 441 [56]; 449 [105]–[107].

580 At RCS [13.19], counsel for Mr Pesutto advanced this submission about the relevant sector in this case: "[S]ome people loved Mrs Deeming; some people hated her; and there was often no middle ground. The sector, relevantly, can be described as her reputation for holding, expressing and giving succour to hateful, controversial or extreme social or political views".

581 That submission is, with respect, misconceived.

582 Firstly, a relevant "sector" must relate to that sector of a plaintiff's life that has relevance to the libel complained of. See, by way of example, *Plato Films* at 1131 (Lord Radcliffe) and at 1140 (Lord Denning); *McBride* at 435 [17] (Ipp A-JA).

583 In *Television New Zealand Ltd v* ***Prebble*** [1993] 3 NZLR 513, Mr Prebble was the Minister for State-Owned Enterprises, and he sued the defendant for defamation, alleging that a program it broadcast falsely claimed that he secretly conspired to sell state assets on unduly favourable terms in return for donations to his political party. As to evidence of reputation, the defendant pleaded:

> IF the meanings are as alleged by the Plaintiff (which is denied) then the Plaintiff has suffered no damage by reason of the publication by the Defendant as alleged **AND THE DEFENDANT HEREBY GIVES NOTICE** that at the trial of this proceeding the Defendant will adduce evidence of ***the Plaintiff's bad reputation as a politician***. That reputation includes that of being hated; a liar; dishonest; a thug; a back stabber; a street fighter; a bully; a mad dog; a breaker of promises; arrogant; pushy; offensive; belligerent; threatening; undemocratic; intimidatory.
>
> (Italicised emphasis added.)

584 The plaintiff sought to strike out those particulars. On appeal, the Court of Appeal struck out the words "hated, a bully, a mad dog, arrogant, pushy, offensive, belligerent, threatening, intimidatory", but allowed the other words "a thug, a back stabber, a street fighter" and "hysterical" to remain. Cooke P explained that there is a broad difference between allegations of disagreeable characteristics such as arrogance or belligerence and allegations of want of integrity, reasoning as follows (at 524–5):

> In this case Smellie J identified the plaintiff's performance as Minister for State-Owned Enterprises as "the sector of his life and career as a politician which has primary relevance to the libel complained of". If meant as a limiting criterion, that would be too narrow. Many people do not carefully distinguish in their opinion of a prominent politician between performances in various portfolios. The political image is of the person rather than the office-holder.
>
> Miss Moran submitted that the relevant sector here is the plaintiff's reputation as a politician, pointing out that all the epithets pleaded are expressly limited to that sector. But the plaintiff claims, and understandably so, that the programme attacked his probity as politician. There is a broad difference between, on the one hand, allegations of disagreeable characteristics such as arrogance or belligerence and, on the other, allegations of want of integrity. If a politician was generally reputed to be a bully, a reasonable jury should not on that account reduce any damages awarded to him for being falsely called dishonest. Some of the alleged descriptions struck out by the Judge are capable of relating to the sting of the libel, namely *a thug, a back stabber, a street fighter*; these can all suggest something underhand. *Hysterical* can just be admitted in the context of a claim that the programme meant that the plaintiff was so worried that he arranged for papers to be shredded. I would therefore restore the words just italicised, leaving struck out as not within the relevant sector *hated, a bully, a mad dog, arrogant, pushy, offensive, belligerent, threatening, intimidatory*.

585 Here, Mr Pesutto did not plead, nor did he submit, that Mrs Deeming had or has a bad reputation as a politician, nor "as" anything else. Rather, it was contended that "some people loved [her]; some people hated her". That cannot conceivably found the proposition that she therefore has "a reputation for holding, expressing and giving succour to hateful, controversial or extreme social or political views". And the proposition is irrelevant for the purposes of the law of defamation because, quite apart from anything else, it does not identify a part of Mrs Deeming's life that has relevance to the libel complained of.

586 Secondly, as Warby LJ said in *Banks v Cadwalladr* [2023] KB 524 at 545 [55]–[56], a person's reputation "is not a simple question of whether they are liked or disliked" and is not "a single indivisible whole". It is composed of sectors. As Warby LJ explained, evidence of bad reputation must be confined to the sector of the claimant's character relevant to the libel, because "[i]f it

were otherwise a person who was widely disliked or had a bad reputation in one sector of their reputation would find it hard to succeed in a defamation claim whatever grave falsehood was published about them". And it is for that reason that courts reject arguments, like the one advanced by Mr Pesutto here, "that a serious allegation of specific wrongdoing does not cause serious harm if the audience dislikes the claimant for some other reason".

587 Before leaving this topic, I should mention two other things that Cooke P said in *Prebble* (at 525). The learned judge warned of two potential dangers of permitting a party to go into evidence at trial about the particulars that were not struck out (ie, that Mr Prebble had a bad reputation as a politician, being "a thug, a back stabber and a street fighter"), namely:

> (1) the unacceptable risk that the defendant might be able to divert the course of the trial from the true issues; and
>
> (2) that the wording of the defendant's pleading might be found gratuitously offensive, something that the defendant "will have to face should any assessment of damages be required".

588 Here, the trial was diverted from the true issues by some of the evidence and submissions that in the end amounted to no more than that some people "love" Mrs Deeming and some people "hate" her. And as I explained above, Mr Pesutto's evidence about what he called Mrs Deeming's bad reputation was gratuitously offensive, because, when asked to justify the slur, he could not.

589 I return to the issue of Mrs Deeming's reputation under the rubric of damages, below.

Abuse directed at Mrs Deeming post publications

590 Since the publications, Mrs Deeming has been the subject of a wave of abusive and hateful material.

591 Witnesses gave the following unchallenged evidence, which was correctly summarised in Mrs Deeming's closing submissions along the following lines (ACS [1015]–[1027]).

592 Mr Deeming deposed that, since the publications, he has regularly seen posts on Facebook and Twitter which have been disparaging of Mrs Deeming. He has seen people "making explicit claims she is a Nazi or supports Nazis as well as people implying she is a Nazi or supports Nazis". He deposed that he thinks this occurs most days. He also deposed that he has seen Facebook and Twitter posts from Liberal Party members and branches condemning her, including one describing her as the "Eva Braun of the West" (posted by someone Mr and Mrs Deeming previously had a pleasant relationship with).

593 Ms Clark, a member of the Liberal Party who attended the LWS rally, deposed that since the media release she has seen "a lot of media" about Mrs Deeming, much of it repeating what Mr Pesutto said "to the effect that Moira has associations with Nazis". She has also seen "a lot of vile, abusive messages about her on Twitter, including messages which call her a Nazi or Nazi sympathiser". She deposed that she had never seen any such messages prior to the media release.

594 Mr Christopher Duke, a Senior Minister of the Presbyterian Church who met Mrs Deeming through the Church's Church and Nation Committee, deposed that, since the publications, he has seen articles about Mrs Deeming that have received "a large number of negative comments", including comments which "directly or indirectly accuse her of being a Nazi". He could not recall having ever seen any negative comments directed at her in the media before the publications.

595 Ms Gorman, who worked part-time for Mrs Deeming as an electoral officer, deposed that, shortly after the publications, the voice message machine on Mrs Deeming's office phone, her publicly listed email inbox, and her social media accounts on Facebook and Twitter were full of aggressive and hateful messages. She recalled hearing abusive voice messages, including to the effect of, "Is this the Nazi recruitment office?". She also recalled a colleague in the office reading out aloud a few of the emails that were received shortly after the publications which she recalls "were very nasty". She also recalled reviewing social media about Mrs Deeming following the publications, including both public posts and private messages sent to her Facebook and Twitter accounts, including "a lot of social media material that was associating Moira with Nazis".

596 Ms Hughes, who performs casual administrative work for Mrs Deeming, gave evidence that she saw negative comments about Mrs Deeming on Facebook and Twitter, including comments accusing her of being a Nazi. She too did not recall ever seeing such comments prior to the publications.

597 Mr Mundine gave evidence that, since 20 March 2023, whenever he published a tweet about Mrs Deeming, there would be multiple comments in reply to his tweets that would be disparaging of Mrs Deeming.

598 Examples of the tweets that Mr Mundine received (at CC:408, CC:437 and CC:508) include:

(a) on 20 March 2023, in response to his tweet that he was "100% with Moira Deeming":

- "You're 100% with neo-Nazis";
- "Warren - can you explain why you are '100% with Moira Deeming' She has had previous form with the neo-nazi right and your support for her suggests you are comfortable with this"; and
- "Who stood beside an avowed neo-nazi and white supremacist and spoke at the rally. You supporting the white supremacists now Warren?"

(b) on 21 21 March 2023, in response to his tweet including the words "I stand with Moira Deeming":

- "You stand with nazis? Honestly doesn't surprise me..";
- "You stand with Nazi racists? Wow!";
- "You mean you stand with Nazis";
- "so, you support nazis…";
- "You stand with Nazis? Nice…"; and
- "Of course, you would - you are happy to stand with people who hate minorities and are supported by neo-Nazis";

(c) on 2 April 2023, in response to his tweet including the words "I support Moira":

- "She was hanging out with the Nazis. Keep it classy";
- "All you nazis stick together";
- "@MoiraDeemingMP embraced the support of NeoNazis on the steps of Parliament House 16 days ago…"; and
- "So you hang out with neo-nazis... good to know."

599 Mr Mundine could not recall ever hearing any suggestion that Mrs Deeming was associated with Nazis, "or anything similar", prior to the publications.

600 Ms Papadimitriou, who attended the LWS rally, deposed that since 19 March 2023 she has observed that, whenever Mrs Deeming posts a tweet, she receives comments in reply calling her a Nazi. "The people who post these comments never respond to the substance of her tweet, but consistently defer to calling her a Nazi or a Nazi sympathiser". Prior to 19 March 2023, Ms Papadimitriou had never seen such comments about Mrs Deeming.

601 Mr Riordan gave evidence that, since 19 March 2023, he has regularly seen posts online "that refer to Moira being a Nazi and a right-wing nutjob".

602 Mr Ruddick gave evidence that he has seen comments about Mrs Deeming on Twitter since 19 and 20 March 2023 which were disparaging of her, including many which implied she was a Nazi or Nazi supporter. For example:

(a) when he posted a tweet on 20 March in support of Mrs Deeming, there were comments which directly suggested she "supports" Nazis and that she hangs out with Nazis and comments implying she is a Nazi;

(b) comments in May 2023 referring to "her mate Hitler" and that she has been "prostituting herself with Weirdos and Nazi's"; and

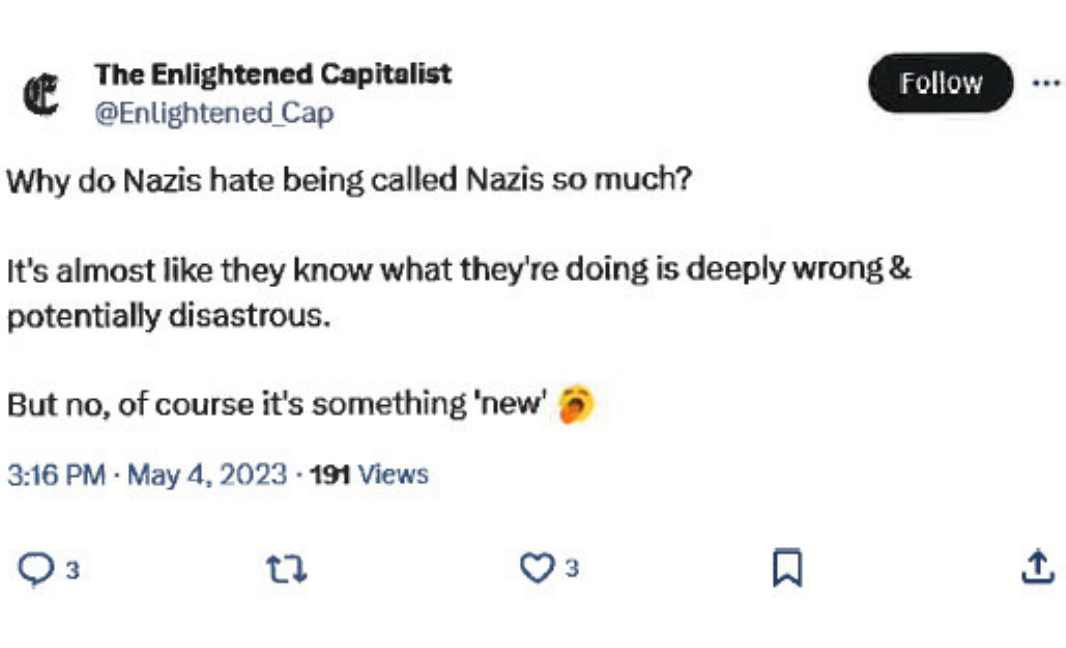
(c) comments in July or August 2023 including that "she actually APPEARED with Nazis" and that she and Mr Ruddick are "nazi bigots".

603 Ms Thompson, who met Mrs Deeming in 2010 through the Liberal Party, gave evidence that she has seen several Facebook posts that were disparaging of Mrs Deeming, including comments to the effect of "the Liberal Party will not win government in Victoria whilst it has extremists like Moira Deeming in its ranks". She also saw negative comments about Mrs Deeming on a Liberal Party Facebook page called "Web Warriors" (which is a Facebook page in which members can share their views and opinions about matters relating to the Liberal Party), including comments suggesting Mrs Deeming "had associated with Nazis". She had not seen any such comments about Mrs Deeming, on any forum, before 19 March 2023.

604 Ms Walton, who met Mrs Deeming in around 2009 through Church, gave evidence that, shortly after the publications, she saw hateful posts about Mrs Deeming on social media including on Facebook and Twitter. She saw comments calling her a "bigot" or a "Nazi" or a "Nazi sympathiser".

605 Ms Wong, who is the CEO of WFA, has seen numerous posts on social media, primarily on Twitter, that were disparaging of Mrs Deeming since the publications, including tweets that called her a Nazi or accused her of associating with Nazis. Ms Wong has published several tweets about Mrs Deeming since the publications which received a large number of negative comments in reply. For example:

(a) in response to Ms Wong's tweet on 4 May 2023, comments in reply to the tweet included a tweet stating, "You can't stand with Nazis and not expect to get treated like one"; and the following tweet:



The Enlightened Capitalist
@Enlightened_Cap

Why do Nazis hate being called Nazis so much?

It's almost like they know what they're doing is deeply wrong & potentially disastrous.

But no, of course it's something 'new' 🥱

3:16 PM · May 4, 2023 · 191 Views

(b) in response to Ms Wong's tweet on 12 May 2023, comments in reply to the tweet included a tweet stating, "People who share views with neo-Nazis really aren't suited to working in politics in a free country like Australia"; and another tweet stating, "Maybe they found Moira Deeming a bit too Nazi-adjacent?".

606 Mrs Deeming also received hateful private messages following the publications.

607 Examples include being called a "female racist bigoted nazi", a "creep", a "hate filled intolerant monster", "toxic", "Nazi scum", "a CUNT of a thing", a "fat Nazi", a "bitch", a "fat retarded Christian pedo bitch", a "fat nazi bitch", "fuckface", a "fatfuck diseased masculine bitch", "mentally ill', a "fat skanky retarded bitch" and a "Parasite".

608 Unsurprisingly, given their content, Mrs Deeming and her staff deleted many similar emails, so she could not produce all of them on discovery. I was invited to conclude therefore that she received many other emails beyond those in evidence, which I do.

609 Other emails or messages were more discursive, but equally deranged, including the following (summarised at ACS [1032]):

(a) "You and your filthy offspring do not represent the Australian dream. No wonder your husband does what he does. Neo Nazis, fascists and white supremacists deserve to end up like Mussolini and your Führer, starting with your offspring so they won't pollute the next generation. You are hardly white yourself. Do your husband and the world a favour and have no more litters. Four is enough. Unloved and inadequate woman failing miserably trying to be a mother. You are a disgrace to this beautiful country and must be excised like the puss filled bag you are."

(b) "Shame on you for attending a nazi rally…I will complain about you until you are rightfully removed from office. Absolutely disgusting."

(c) "What a concerning situation! There you are talking to Neo Nazis and other white supremacists and you can't see a problem. You need to leave politics. Such Trumpian behaviour has no place in this country. Better still invent a time machine and head back to the 1950s. Even then I think there would still be consternation. You'll be remembered for all the wrong reasons, you Fox News lovin' moron."

(d) "Anti-Semitism & any form of racism is not okay. Your association with far-right racist organisations stains our parliament."

(e) "Oh no cry for the poor nazi, so hard done by! Eat shit and fuck off cunt!"

(f) "Nazi scum, FUCK OFF you're a CUNT of a thing!!!"

(g) "I hope your deformed and mentally ill kids get gang raped in front of you".

(h) "Your children are correct, you are a nazi".

610 In tweets posted shortly after the publication of the media release between 19 and 21 March 2023, Mrs Deeming was called, among other things, the following (summarised at ACS [1037]):

> "a pro Nazi enemy of Australians"; someone with "nazi mates"; a "nazi accolyte [sic]"; "nazi-adjacent far-right filth"; a "nazi lover"; a "waste of tax payers money"; a "woman [who] aligns with Nazis"; a "fascist who happily celebrated the Nazi parade with fascist boys and a racist fascist"; "Somebody too horrible for even the Liberal Party"; a "Nazi apologist" who was told to "Fuck off"; "irredeemable"; a "nazi sympathiser"; a "neo-Nazi"; someone who "knowingly consorted with & supported Nazis"; a "Neo Nazi sympathiser and a raging bigot"; a "NAZI Sympathiser and as such ANTI-SEMITIC"; and a "disgusting woman filled with Fascist hatred and bigotry!!".

611 Mrs Deeming continued to be the subject of abusive, hateful and offensive tweets after 21 March, and up to and including the date of the trial. She was attacked as being (summarised at ACS [1040]):

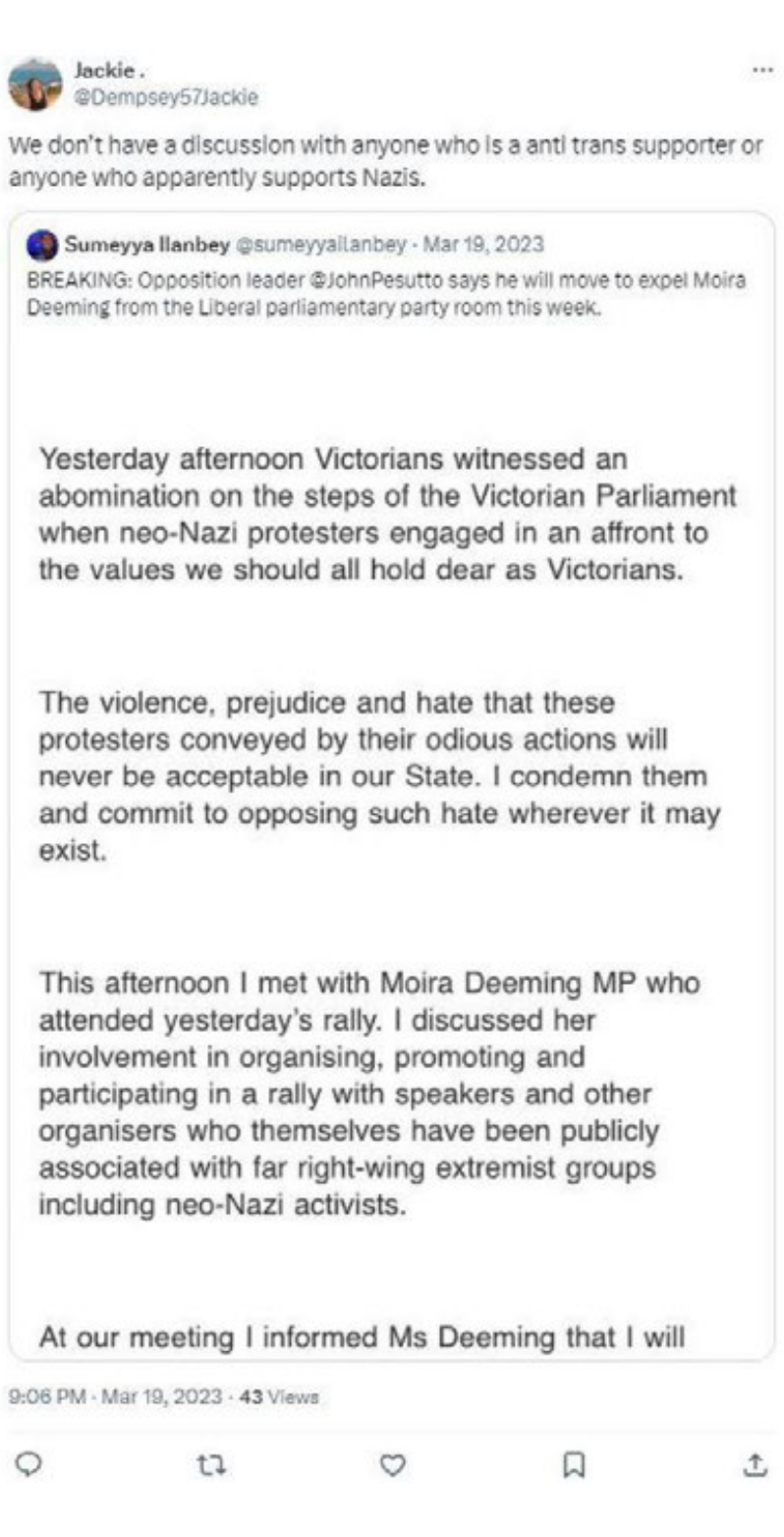
> a "dumb cunt…hanging around Nazis", "nasty bitch", "nazi girl", a "demon", a "parasite and Nazi supporter", "vile", a "selfish fat bitch", a "freak", a "FAT DIRTY nazi","Eva Braun", an "evil Nazi", a "disgraced politician" and the "Eva Braun of the western suburbs", a "Nazi sympathiser and TURD", someone who is as "wicked as those Neo-nazis", a "Nazi" and that "everything [she] stand[s] for is wrong", "nazi-adjacent", a "liar", someone who "stands with Nazis", a "Nazi associate", a "nazi sympathiser", someone who "works with Nazis", a "vile TERF" who "stood with neo-Nazis", a "toxic flat earth nazi", a "TERF supporting Nazi associator", "a bigot, a Nazi and a trans-phobe", "standing with Neo Nazis", "an ugly person", a "nazi loving TERF", as someone who was "standing up and rubbing shoulder with the Fasch", as someone who participates in "bigotry and Nazi sympathising", a "Nazi sympathiser", a "transphobe and neo-nazi supporter", "a dumb cvnt", "nasty right wing bitch", as someone who is "standing up with neo Nazis", as someone who "stands with bigots and Nazis", a "toxic nazi sympathiser", "Nazi lover and transphobe Moira Deeming", "Nazi lover", "Moira Deeming, the Nazi?", "just like Hitler", "in bed with Nazis", as an MP who is "on the same side as literal Nazis", that Mrs Deeming is "waiting in the wings to take the [Liberal] party full Nazi", as someone who has "Nazi supporters", as someone with "nazi heritage", a "lying nazi", and someone who was "inviting Nazis to her rally and sharing the same views as them".

612 Other tweets included:

(a) "in Australia, c*nts like Moira Deeming are elected to parliament" (CC:705, 3499); and

(b) "[c]hild services should remove the children. No child should be in a household that perpetuates nazi sympathies" (CC:706, 3579).

613 Mrs Deeming submitted that at least a very significant portion of the various communications that I have summarised above was a result of the publications. Mr Pesutto contended otherwise, but it seems to me that the proposition is irresistible, including because many of them, as Mrs Deeming submitted, were, on their face, posted as a direct reaction or response to the publications. So much is readily apparent because they include screenshots of the publications or quote from or refer to and repeat the words used by Mr Pesutto in them. By way of example (see Ex A285):



Jackie .
@Dempsey57Jackie

We don't have a discussion with anyone who is a anti trans supporter or anyone who apparently supports Nazis.

Sumeyya Ilanbey @sumeyyailanbey · Mar 19, 2023
BREAKING: Opposition leader @JohnPesutto says he will move to expel Moira Deeming from the Liberal parliamentary party room this week.

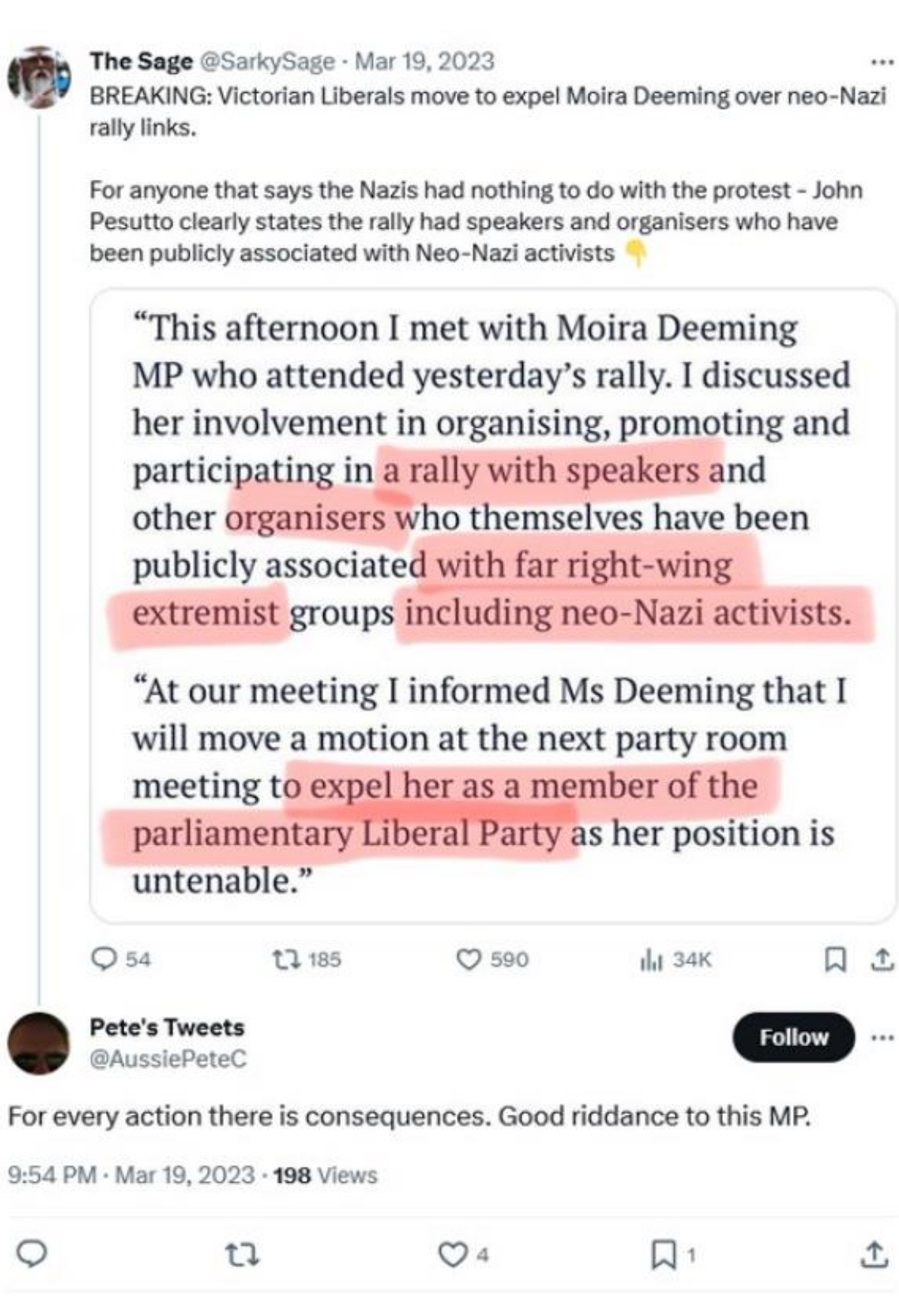
Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protesters engaged in an affront to the values we should all hold dear as Victorians.

The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our State. I condemn them and commit to opposing such hate wherever it may exist.

This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

At our meeting I informed Ms Deeming that I will

9:06 PM · Mar 19, 2023 · 43 Views



The Sage @SarkySage · Mar 19, 2023
BREAKING: Victorian Liberals move to expel Moira Deeming over neo-Nazi rally links.

For anyone that says the Nazis had nothing to do with the protest - John Pesutto clearly states the rally had speakers and organisers who have been publicly associated with Neo-Nazi activists 👇

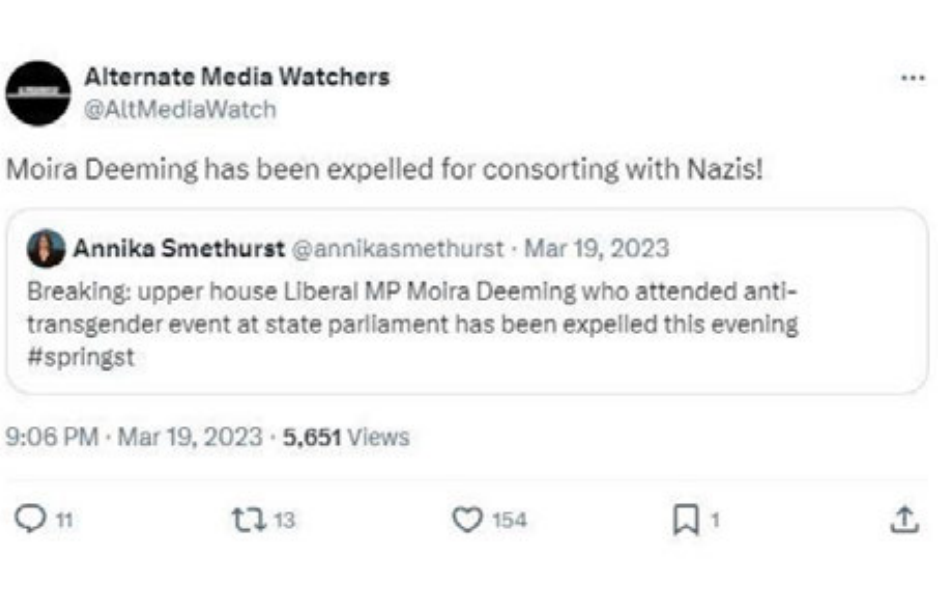
"This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

"At our meeting I informed Ms Deeming that I will move a motion at the next party room meeting to expel her as a member of the parliamentary Liberal Party as her position is untenable."

Pete's Tweets
@AussiePeteC

For every action there is consequences. Good riddance to this MP.

9:54 PM · Mar 19, 2023 · 198 Views

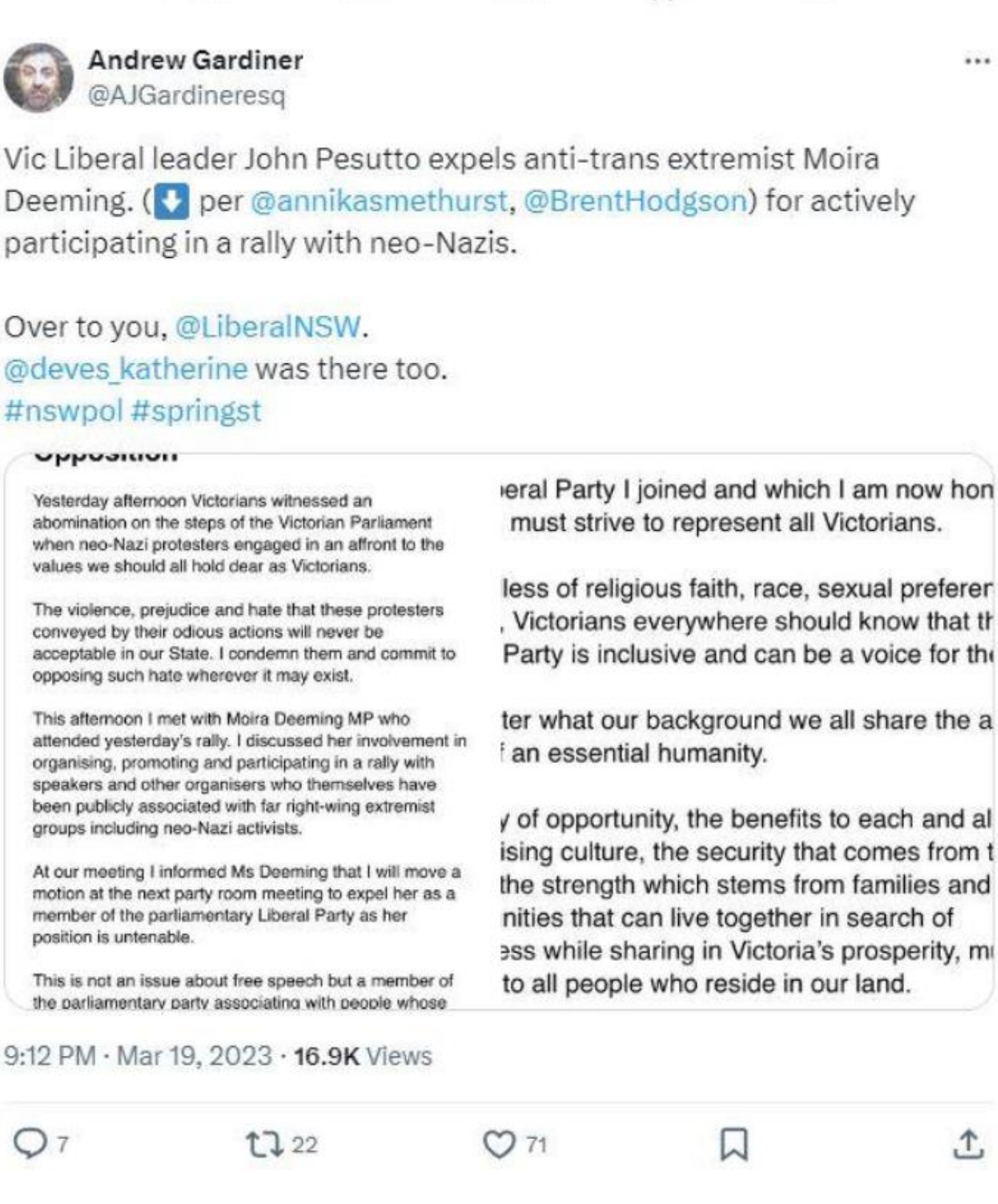


Alternate Media Watchers
@AltMediaWatch

Moira Deeming has been expelled for consorting with Nazis!

Annika Smethurst @annikasmethurst · Mar 19, 2023
Breaking: upper house Liberal MP Moira Deeming who attended anti-transgender event at state parliament has been expelled this evening #springst

9:06 PM · Mar 19, 2023 · 5,651 Views



Andrew Gardiner
@AJGardineresq

Vic Liberal leader John Pesutto expels anti-trans extremist Moira Deeming. (⬇️ per @annikasmethurst, @BrentHodgson) for actively participating in a rally with neo-Nazis.

Over to you, @LiberalNSW.
@deves_katherine was there too.
#nswpol #springst

Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protesters engaged in an affront to the values we should all hold dear as Victorians.

The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our State. I condemn them and commit to opposing such hate wherever it may exist.

This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

At our meeting I informed Ms Deeming that I will move a motion at the next party room meeting to expel her as a member of the parliamentary Liberal Party as her position is untenable.

This is not an issue about free speech but a member of the parliamentary party associating with people whose

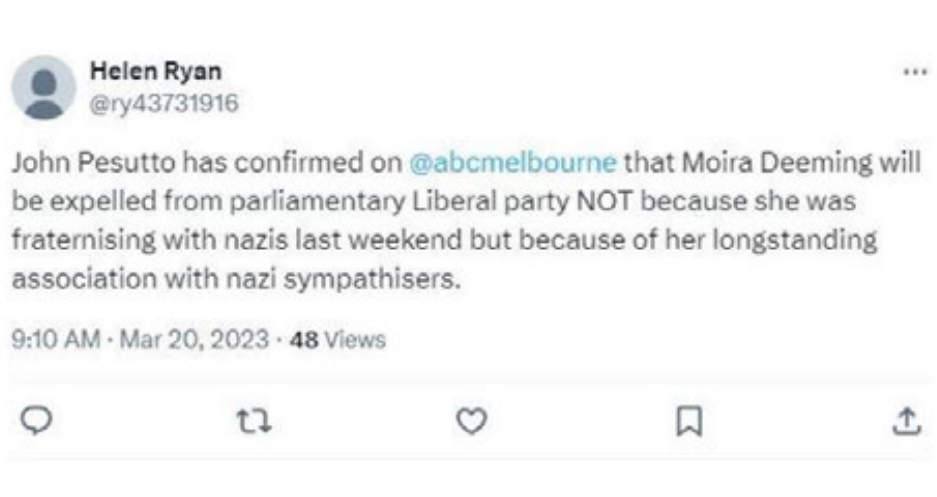
eral Party I joined and which I am now hon
must strive to represent all Victorians.

less of religious faith, race, sexual preferer
, Victorians everywhere should know that th
Party is inclusive and can be a voice for th

ter what our background we all share the a
an essential humanity.

of opportunity, the benefits to each and al
ising culture, the security that comes from t
the strength which stems from families and
nities that can live together in search of
ess while sharing in Victoria's prosperity, m
to all people who reside in our land.

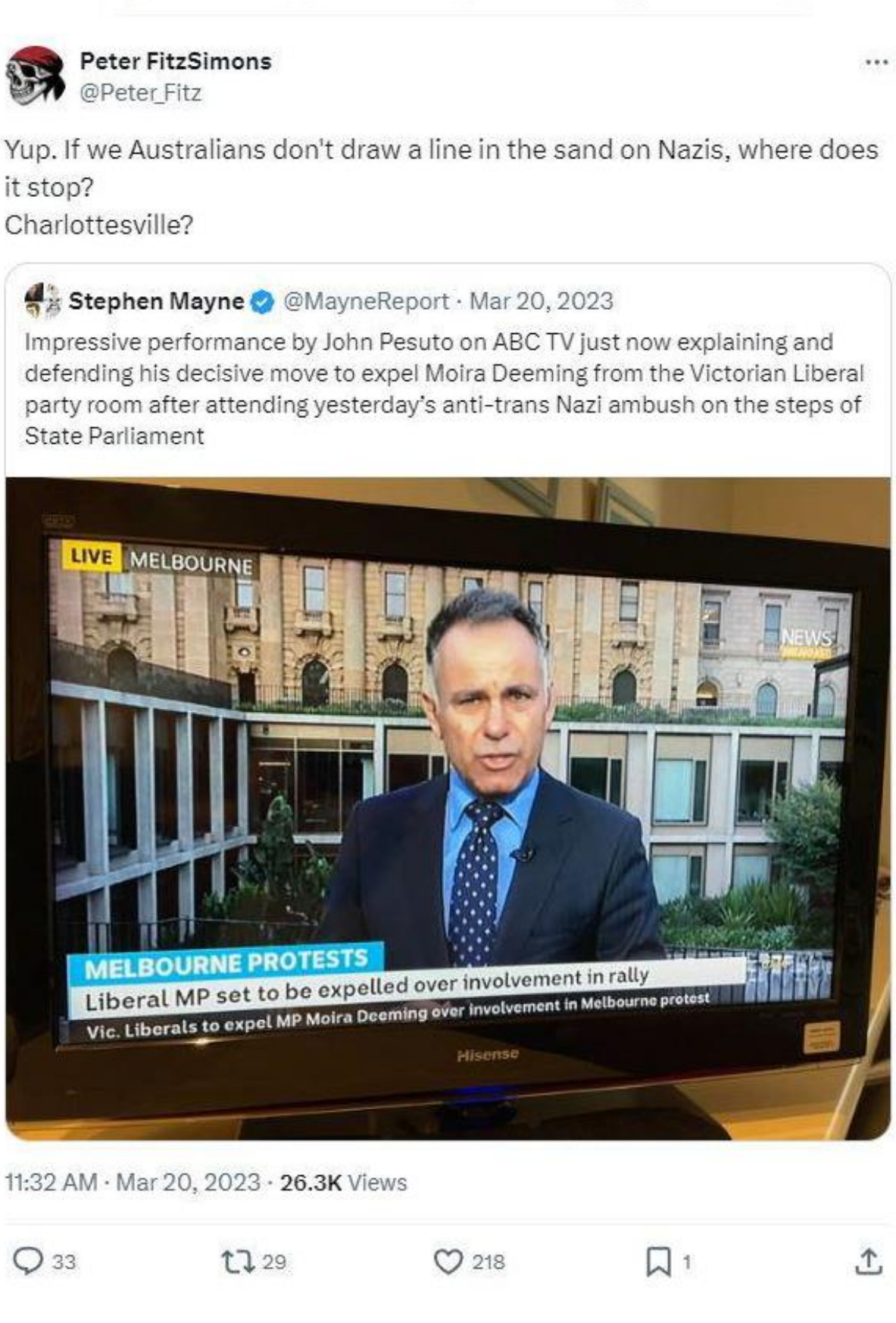
9:12 PM · Mar 19, 2023 · 16.9K Views



Helen Ryan
@ry43731916

John Pesutto has confirmed on @abcmelbourne that Moira Deeming will be expelled from parliamentary Liberal party NOT because she was fraternising with nazis last weekend but because of her longstanding association with nazi sympathisers.

9:10 AM · Mar 20, 2023 · 48 Views



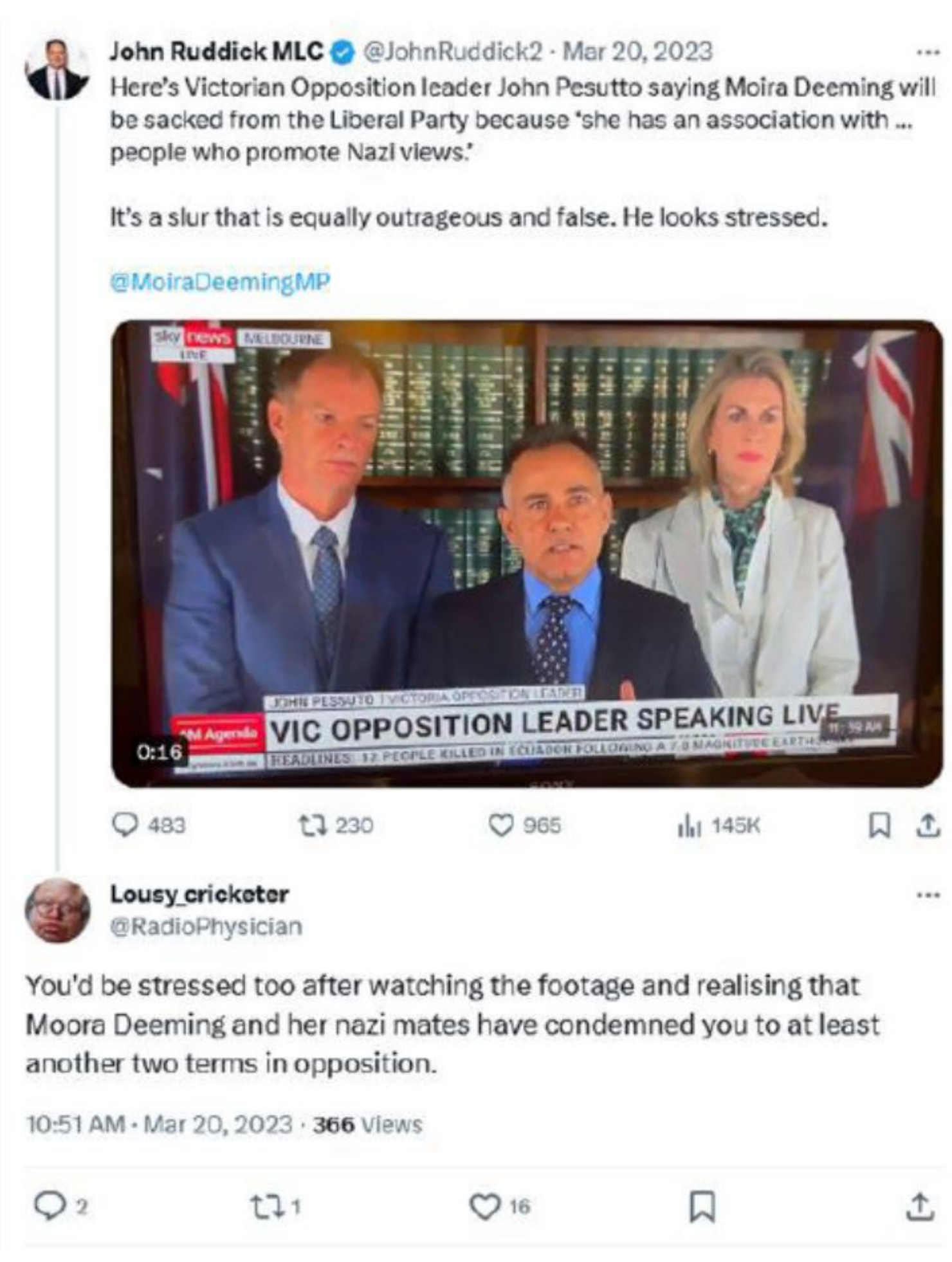
Peter FitzSimons
@Peter_Fitz

Yup. If we Australians don't draw a line in the sand on Nazis, where does it stop?
Charlottesville?

Stephen Mayne @MayneReport · Mar 20, 2023
Impressive performance by John Pesuto on ABC TV just now explaining and defending his decisive move to expel Moira Deeming from the Victorian Liberal party room after attending yesterday's anti-trans Nazi ambush on the steps of State Parliament

LIVE MELBOURNE
NEWS
MELBOURNE PROTESTS
Liberal MP set to be expelled over involvement in rally
Vic. Liberals to expel MP Moira Deeming over involvement in Melbourne protest
Hisense

11:32 AM · Mar 20, 2023 · 26.3K Views



John Ruddick MLC @JohnRuddick2 · Mar 20, 2023
Here's Victorian Opposition leader John Pesutto saying Moira Deeming will be sacked from the Liberal Party because 'she has an association with ... people who promote Nazi views.'

It's a slur that is equally outrageous and false. He looks stressed.

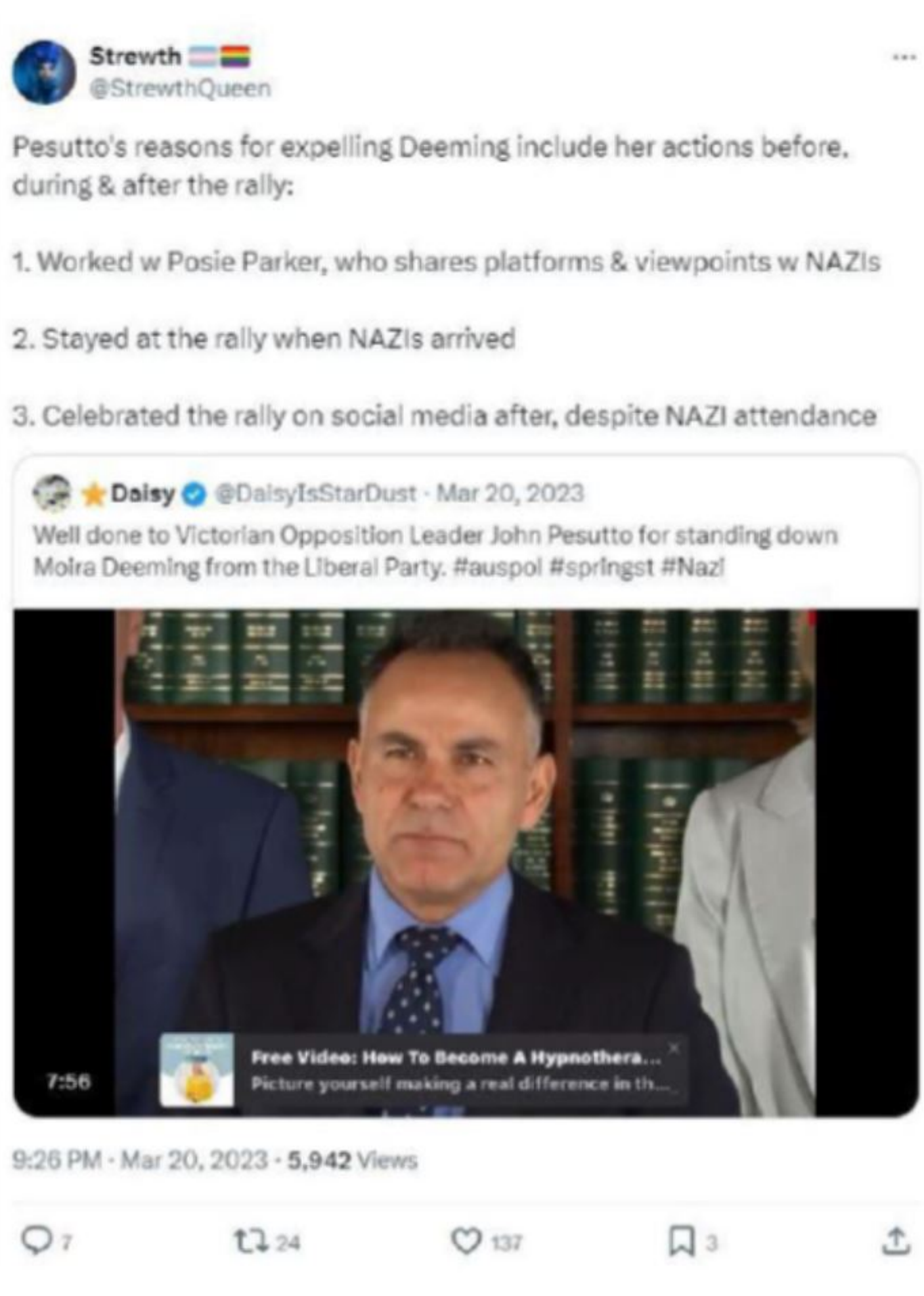
@MoiraDeemingMP

sky news MELBOURNE LIVE
JOHN PESSUTO | VICTORIA OPPOSITION LEADER
AM Agenda
VIC OPPOSITION LEADER SPEAKING LIVE
0:16
483
230
965
145K

Lousy_cricketer
@RadioPhysician

You'd be stressed too after watching the footage and realising that Moora Deeming and her nazi mates have condemned you to at least another two terms in opposition.

10:51 AM · Mar 20, 2023 · 366 Views



Strewth 🏳️‍⚧️🏳️‍🌈
@StrewthQueen

Pesutto's reasons for expelling Deeming include her actions before, during & after the rally:

1. Worked w Posie Parker, who shares platforms & viewpoints w NAZIs

2. Stayed at the rally when NAZIs arrived

3. Celebrated the rally on social media after, despite NAZI attendance

⭐ **Daisy** @DaisyIsStarDust · Mar 20, 2023
Well done to Victorian Opposition Leader John Pesutto for standing down Moira Deeming from the Liberal Party. #auspol #springst #Nazi

Free Video: How To Become A Hypnothera...
Picture yourself making a real difference in th...
7:56

9:26 PM · Mar 20, 2023 · 5,942 Views

614 Then there were the voicemails left, needless to say, by anonymous callers. There were a number of them. One example, left on 23 March 2023 (Ex A274; CC:412), will suffice:

> Moira has no place in Victoria, so you're welcome to leave whenever you want. Go move up to Queensland, you can move in with Pauline Hanson or something. Fricking clown. Nazi sympathiser. Fricking far right goons. It's fucking atrocious mate, and not one of you fuckheads – oh sorry for swearing. Not one of you lovely people have condemned the far right, because you are the far right. Bunch of clowns. I'm sorry to be rude but it's unacceptable and I don't see any of you people making a stand against Nazi's and flagships because you've fricking caught them and they're attracted to you and they're attracted to your ideas and your ideologies because you're a bunch of goon clowns. So yeah, thank you. Have a nice day.

Serious harm established

615 For those reasons, I am satisfied, having regard to the seriousness of the imputations carried, the extent of publication, the inherent probabilities, and the evidence of the actual impact of the publications, that the publication of each of the impugned publications has caused, or is likely to cause, serious harm to Mrs Deeming's reputation.

DEFENCES

616 Mr Pesutto pleaded four defences.

617 First, **public interest**. Mr Pesutto contended that he reasonably believed that publication of each of the impugned publications was in the public interest, attracting the operation of the defence contained in s 29A of the Act.

618 Secondly, **honest opinion**. Mr Pesutto contended that each of the impugned publications was an expression of opinions honestly held by Mr Pesutto on the basis of substantially true facts, attracting the operation of the defence in s 31 of the Act.

619 Thirdly, ***Lange* qualified privilege**. Mr Pesutto contended that the impugned publications concerned the discussion of government and political matters, and their publication was reasonable in the circumstances, and so are protected by the *Lange* form of common law qualified privilege. See ***Lange*** *v Australian Broadcasting Corp* (1997) 189 CLR 520.

620 Fourthly, **contextual truth**. Mr Pesutto contended that if any of the imputations pleaded by Mrs Deeming are found to be carried by the impugned publications, they attract the defence of contextual truth in s 26 of the Act by reason of the substantial truth of the contextual imputations identified in Mr Pesutto's defence.

621 Taking each of the defences in turn.

Public interest

622 Section 29A of the Act provides as follows:

> **29A Defence of publication of matter concerning issue of public interest**
>
> (1) It is a defence to the publication of defamatory matter if the defendant proves that—
>
> (a) the matter concerns an issue of public interest, and
>
> (b) the defendant reasonably believed that the publication of the matter was in the public interest.
>
> (2) In determining whether the defence is established, a court must take into account all of the circumstances of the case.
>
> (3) Without limiting subsection (2), the court may take into account the following factors to the extent the court considers them applicable in the circumstances—
>
> (a) the seriousness of any defamatory imputation carried by the matter published;
>
> (b) the extent to which the matter published distinguishes between suspicions, allegations and proven facts;
>
> (c) the extent to which the matter published relates to the performance of the public functions or activities of the person;
>
> (d) whether it was in the public interest in the circumstances for the matter to be published expeditiously;
>
> (e) the sources of the information in the matter published, including the integrity of the sources;
>
> (f) if a source of the information in the matter published is a person whose identity is being kept confidential, whether there is good reason for the person's identity to be kept confidential (including, for example, to comply with an applicable professional code or standard);
>
> (g) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person;
>
> (h) any other steps taken to verify the information in the matter published;
>
> (i) the importance of freedom of expression in the discussion of issues of public interest.
>
> (4) Subsection (3) does not—
>
> (a) require each factor referred to in the subsection to be taken into account; or
>
> (b) limit the matters that the court may take into account.
>
> (5) Without affecting the application of section 22 to other defences, the jury (and not the judicial officer) in defamation proceedings tried by jury is to determine whether a defence under this section is established.

623 As Lee J said in ***Russell*** *v Australian Broadcasting Corp **(No 3)*** (2023) 303 FCR 372 at 431 [318], s 29A "deploys the concept of 'public interest' in two different senses. Subsection 29A(1)(a) focusses attention on the relevance of the publication to 'an issue of public interest' whereas s 29A(1)(b) requires the making of a value judgment about whether the publication was 'in the public interest'".

624 Sub-section 29A(1)(b):

> focusses attention of the character of the publication. Where the expression "in the public interest" is used in a statutory context, it "imports a discretionary value judgment to be made by reference to undefined factual matters" … restricted only "in so far as the subject matter and the scope and purpose of the statutory enactments" … Similar expressions, such as "for the public benefit", have a history of use in defamation legislation, and have also been construed as requiring "what is essentially a value judgment as to whether the public would benefit from the subject being discussed publicly" …
>
> (Ibid at 431 [320].)

625 Mrs Deeming accepted that s 29A was applicable to politicians, not only to cases involving mass media or journalist respondents.

626 Mr Pesutto agreed that the availability of s 29A is not limited to journalists, and it "has a potentially broad reach and is capable of adapting to the circumstances of a particular case, including this one", but asserted nonetheless that the checklist of factors in s 29A(3) "has no useful work to do" in cases involving politicians (RCS [27.3]).

627 Mr Pesutto contended, in particular, that "when it comes to considering the statutory mandate in s 29A(2)" and "when considering which, if any, of the non-exhaustive list of factors in s 29A(3) are applicable … matters which may be critical in cases of investigative journalism and mass media communications – such as setting out the substance of both sides of a story – may have no work to do at all in assessing the reasonableness of a publisher's belief in a case such as the present, which involves a politician engaged in advocacy of his own position" (RCS [22.18]).

628 Mr Pesutto also contended that factor (g) (whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person) "is not applicable in the context of Publications by a politician made in order to inform the public of a political decision" (RCS at [27.20]).

629 I do not accept those limitations on the operation of the section. There is no foundation for them in the plain words of it, nor did counsel point to any secondary source to support the proposition that it was intended to operate differently when politicians are respondents in defamation claims.

630 As Wigney J explained in ***Murdoch*** *v Private Media Pty Ltd* [2022] FCA 1275 at [64]ff, and as the parties here agreed, the defence in s 29A involves three elements.

631 The first element is that the "matter concerns an issue of public interest".

632 Mrs Deeming conceded that each of the five impugned publications is such a matter.

633 The second element is that the defendant believed that the publication of the matter was in the public interest. This element concerns his **actual** state of mind, so here Mr Pesutto must prove that he in fact believed that publication of each matter was in the public interest. The focus is likely to be on things he said or knew or did, or failed to do, up to the time of publication. The truth or falsity of the allegation complained of is not a relevant consideration.

634 The third element is that the respondent's belief that the publication of the matter was in the public interest was reasonable. This, in most cases, will be the "heart of the enquiry". See *Russell (No 3)* at 432 [324].

635 This third element involves an assessment of all the circumstances of the case. As Wigney J said in *Murdoch* (at [67]), "[t]here is no doubt a degree of objectivity involved in this element. The question, essentially, is whether a reasonable person standing in the defendant's 'shoes' – that is, in particular, possessing the information that the defendant possessed at the time – would have held that belief".

636 As Wigney J also said in *Murdoch* at [68]:

> While all of the circumstances of the case must be considered, the focus of much of the inquiry in respect of the third element is generally likely to be on the nature and content of the publication, the seriousness of the defamatory imputations found to have

> been conveyed by the publication, the information possessed by the defendant and its sources, and the steps taken by the defendant to check or verify that information.

637 In *Russell (No 3)* at 433 [329] Lee J said that the following definition of "reasonableness" in *Lange* at 574 "is of considerable importance where s 29A is concerned":

> Whether the making of a publication was reasonable must depend upon all the circumstances of the case. But, as a general rule, a defendant's conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant had reasonable grounds for believing the imputation, took proper steps, so far as they were reasonably open, to verify the accuracy of the material and did not believe the imputation to be untrue. Furthermore, the defendant's conduct will not be reasonable unless the defendant had sought a response from the person defamed and published the response made (if any) except in cases where the seeking or publication of a response was not practicable or it was unnecessary to give the plaintiff an opportunity to respond.

638 It was common ground that the reference to "defamatory matter" and "matter" in s 29A is a reference to the article, report or program which conveyed the defamatory imputation or imputations. It is not a reference to the alleged defamatory imputation or imputations, or the defamatory sting, found to have been conveyed by the relevant article, report or program. See *Murdoch* at [70]; *Russell (No 3)* at 430–1 [316].

639 But as Wigney J observed in *Murdoch* at [73]:

> It is important to emphasise, in this context, that while the relevant "matter", for the purposes of s 29A of the Defamation Act, would appear to be the publication – the article, report or program in question – it is clear that the imputations, or their defamatory sting, found to have been conveyed by the publication cannot be ignored when it comes to determining whether the publication "concerns an issue of public interest". Nor can it be ignored when it comes to considering whether the defendant's belief that publication of the matter was in the public interest was reasonable. The nature, character and seriousness of the sting of the imputation or imputations found to have been conveyed by the publication is likely to be relevant to those issues. So much is readily apparent from the terms of s 29A(3)(a) of the Defamation Act. In some cases that consideration might well be decisive.

640 In *Russell*, Mr Russell was a former Major and Commando Officer within the Special Operations Command of the Australian Defence Force. He sued the Australian Broadcasting Corporation and two of its journalists, in defamation, in relation to the publication of two articles, a television broadcast and a radio broadcast.

641 Mr Russell was the commander of the 2nd Commando Regiment, Alpha Company's November Platoon from 2010 to 2012, including during a deployment to Afghanistan within Special Operations Task Group Rotation Eighteen. The publications concerned the conduct of the November Platoon in Afghanistan.

642 Among many defamatory imputations found to be carried was the imputation that "Mr Russell was the subject of an active criminal investigation by the relevant investigatory defence authority into his conduct as a commando in Afghanistan in June or July 2012 as part of November Platoon". See *Russell v Australian Broadcasting Corp* [2023] FCA 38 at [16].

643 When it came to consider the respondents' s 29A defence in *Russell (No 3)*, the judge accepted that each of the respondents subjectively believed that the publication of the matters was in the public interest, but he found their belief was not reasonable for the following reasons.

644 First, it was not reasonable for the relevant journalist to conclude that a response to his FOI application was "confirmation" of an active criminal investigation into November Platoon (of which Mr Russell had been a member), because the documents sought and produced by the FOI process were not limited to November Platoon (at 439 [366]).

645 Secondly, the "unspecific and fuzzy nature" of the journalist's source's memory "called for caution and pointed to the importance of verification and critical scrutiny" (at 439–40 [369]).

646 Thirdly, the publisher did not do enough to be careful to distinguish what was known and not known, or to explain to readers the nature of his sources and interrogate their integrity, or accurately to convey the other side of the story, and did little or nothing to attempt meaningfully to test the source's account (at 440 [370]–[374]).

647 Fourthly, the publisher "did not distinguish between suspicions, allegations, and proven facts" (at 441 [376]).

648 Fifthly, the publications conveyed imputations to the effect that the applicant was "the subject of an active criminal investigation" and "was reasonably suspected by the relevant investigatory defence authority of committing [war crimes]". In those circumstances, the reasonableness of the publisher's belief "must be assessed against the seriousness of the imputations carried" and the "risk of such serious, specific meanings being conveyed … necessitated care" (at 441 [377]).

Consideration

Did Mr Pesutto subjectively believe that publication of each of the impugned publications was in the public interest?

649 I am satisfied, for the reasons that I will now explain, that Mr Pesutto subjectively, in fact, believed that publication of each of the five matters was in the public interest.

650 Mr Pesutto gave extensive evidence about his subjective belief, much of which he was not cross-examined about.

651 I accept Mr Pesutto's evidence that he subjectively believed that it was necessary immediately to explain to the public why he proposed to move a motion to expel Mrs Deeming.

652 I accept his evidence in his 27 May 2024 affidavit that he thought his decision to move the expulsion motion was the most momentous he had made as party leader; that it was the first major test of his new leadership; that the public had a right to know why he was proposing to expel from the party a newly elected MP and effectively overturn an element of an election result; that it was important proactively to communicate this decision to his colleagues and the public quickly; that he believed it was inevitable that the decision would leak to the media; and that the events surrounding the LWS rally would be a major news story in the coming days.

653 I also accept Mr Pesutto's evidence that he thought staying silent was not an option and that he needed to address the issue to retain credibility because the public would be watching to see how the party responded to the presence of Nazis on the steps of Parliament.

654 The evidence is also replete with Mr Pesutto's preoccupation with the then Premier's political acumen, a man who he thought would take political advantage of the matter. I accept that Mr Pesutto subjectively believed that he had urgently to communicate the expulsion motion to the public, lest it be "mischaracterised or misrepresented" by Mr Andrews or other political foes.

655 Mr Pesutto also said that he was very concerned that what he described as Mrs Deeming's "conduct" "would create an impression of an association between the Party and far-right extremism or doctrines which supported vilification and hatred of members of our community"; that he "was very concerned that … transgender people and the LGBTIQA+ community more broadly, would be alienated and distressed by the events of the Rally, and by Mrs Deeming's conduct at and after the Rally (including her failure to act), and by her public associations with Ms Keen and Ms Jones" and that he "wanted to assure members of the LGBTIQA+ community that the Party was not against them".

656 In their closing written submissions, Mr Pesutto's counsel also relied on evidence that he gave in cross-examination that "the public needed to understand why a major political party was taking action to vote on an expulsion motion" and that he "believed it was essential that I explain to the Victorian people why I was doing this". He also said that he "was gravely concerned about the damage to the party that I believed the party would suffer if we did not act straight away. I didn't believe there was an opportunity to delay matters without risking serious harm to the party; that's the reason I went out. I believed I needed to explain it to the people" (T593.23–27).

657 Mr Pesutto also testified, and I accept, that he participated in the 3AW interview, the ABC interview and the press conference the day after the media release was published because he believed that "there would be people who agreed with it and people who opposed it, and that would be an intense public debate" (T758.22–34).

658 In relation to the EMD, Mr Pesutto gave evidence in cross-examination that he understood from his staff that *The Age* had a copy of it, and that in those circumstances he should provide it to the remainder of the media who wanted it (T835.26–29). He denied, as was put to him in cross-examination, that he used *The Age* article which referred to the karaoke night (see [288] above) as a "pretext" to provide the EMD to the media, or that he did so to harm Mrs Deeming's reputation, or to put pressure on his colleagues to vote in favour of the expulsion motion (T835.43–T836.9).

659 I accept Mr Pesutto's explanation for publishing the EMD, namely that he had spent the previous two days "working as hard as [he] could to communicate the reasons for the decision, and [he] saw the [EMD] as just part of that process of informing the public" (T838.31–35).

660 Mr Pesutto was cross-examined for four days. The length of it was due in considerable part to his inability or refusal to give a simple answer to simple enough questions.

661 I understand that when politicians are engaged in the cut and thrust of politics – facing tough questions in press conferences, for example – their job can involve deflecting questions, pivoting to another topic or running out the clock.

662 But that is not the role of a witness in a court proceeding.

663 Time and time again, Mr Pesutto gave lengthy and non-responsive answers to questions asked of him by Ms Chrysanthou, in particular questions of his understanding of issues going to the public interest (as well as other matters).

664 Here are a few examples.

665 On the second day of his cross-examination, Mr Pesutto was asked a series of questions about what he knew on the evening of 18 March (the day of the LWS rally and the Victorian Multicultural Gala Dinner). Some of those questions and his answers to them are set out below (T677–T679):

> [MS CHRYSANTHOU:] Now, at that point, because you had been at this dinner, you hadn't seen, had you, the video of the four women who had organised the rally?---No, your Honour. I think I – I saw that some time on Sunday.
>
> And you didn't have the information about Mrs Keen that Mr Pintos-Lopez found the next day?---No.
>
> You didn't know from Mrs Deeming her version of what had occurred?---No.
>
> And you didn't know anything about Ms Jones at all, did you?---No.
>
> So at that point you were considering expulsion, were you, on the basis of the fact that Mrs Deeming was at a rally and that there were Nazis at the rally?---Well, considering it wasn't seriously undertaken until the next day when we started looking into the matter – and "considering" as a – a term, I – I think in fairness, is being used fairly broadly in those messages – no one is near any kind of decision at that point. But I think if you've got media articles which are drawing an MP – again, rightly or wrongly – into direct involvement with a – a rally ..... Neo-Nazis, you're going to be very concerned about it. No one is close to making a decision on Saturday night, and, certainly, I wasn't close to making a decision.
>
> …
>
> Do you remember Mr Pintos-Lopez advised you that any action taken needed to be measured and justified?---That would have been a principle that I shared. But, your Honour, I do wish to stress that this is a process where there were a range of different factors we had to take into consideration. And the process was one of them, but informed by the seriousness of the issues in the media and in political discourse over the course of that weekend as well.
>
> Now, do you remember Mr Pintos-Lopez advised you not to take any action on the Sunday other than gather information?---He might have said that, your Honour.
>
> And you didn't follow that advice, did you?---Ultimately, I – well, I followed the course I believed which was appropriate, which was to gather as much information as we could, but then make a decision about whether we needed to act. Urgency was an imperative as well, your Honour, which I'm happy to elaborate if it will assist. But I expect my staff to give advice as they see it. I promote in my office the idea of contestability of advice. I don't want people to tell me what they think I want to hear. And I welcome advice from all perspectives, but ultimately I'm the one who has to make a decision. And, your Honour, I had to take into account a range of factors. And Mr Pintos-Lopez was a Chief of Staff I regarded very highly. I too considered delaying matters as part of the many considerations I entertained that day. But I just wish to emphasise, I'm the one who has to make the decision with my leadership colleagues at the end of the day.
>
> It's right, isn't it, that after he gave you that advice, you said words to the effect that you wanted to act straight away that day?---I can't recall any specific words I used. But, your Honour, I was concerned about the urgency and I was very conscious that, whilst delay can have a prepossessing appeal because you're putting off very difficult action, it can come at a great cost. And the great cost I was concerned about, when reflecting on all of the different options that might have been available that day, delay carried enormous risk because the atmosphere of that weekend, the dynamics that were circulating across political discussion in the media, on social media, were very strong. And in my experience of being involved in public life and in and around government is that in a matter like this if you delay and open yourself up to the charge of not taking an issue seriously, whatever the steps might be if you are – if you delay for a day while there is broadside after broadside launched against the party on the basis of accusations, fair or unfair, that we haven't acted in response to the protests which saw neo-Nazis there, that can come at a great price to the party standing as well. So I had to take those matters into consideration.

666 Shortly after that, Mr Pesutto was taken by counsel to the draft media release that he prepared on his way to Mr Riordan's lunch in Colac, and the following exchanges occurred (T681.10–36):

> MS CHRYSANTHOU: So just going back to the two paragraphs about Mrs Deeming in the middle. Now, based on your knowledge of Mrs Deeming in the time that you had known her, you did not seriously think, did you, that she was involved in the organisation or actions of the Nazi protesters?---Your Honour, at that stage I had no way of knowing that for certain. I didn't know – I hadn't gone to my office that day yet. I hadn't met with my staff and my colleagues to talk about the matter or had met with Mrs Deeming, as I would later in the day. So I had no way of knowing. This was – if I can cut to the quick, this was a thought I had about what might be one possible outcome of the day.
>
> What I'm suggesting to you is the reason you had that thought in that paragraph, that Mrs Deeming assured you that she was not involved in the organisation or action of the Nazi protesters, is because of your knowledge of Mrs Deeming, your interactions with her and the fact that you did not actually think in any serious way at 12.30 pm on the Sunday that she was involved in the organisation or actions of the Nazi protesters?---That's incorrect, your Honour. This was a draft statement that I prepared, but in the nature of these things, you think about different scenarios and different outcomes. And I will tell your Honour, all day I was thinking about this issue because I knew that we would have to make a decision almost certainly by the end of the day, and I knew whichever course we charted and in particular I chose as leader would be a decision of enormous consequence for the Liberal Party. It's not something I did lightly. This message is one – I think I might have even been in the car on the way to the event – that I drafted as a possible outcome thinking about the scenarios and, indeed, thinking that one possible outcome that would save the party, protect the party, save it from all of the activity that goes into potential disciplinary action – this would be one of them. I had no view on how confidently it would materialise.

667 I then intervened, as follows (T682.5–34):

> [O'CALLAGHAN J:] You thought it was still possible, driving to Colac, that Mrs Deeming had been involved in the organisation or actions of the Nazi protesters?---I'm sorry, your Honour. I misheard that.
>
> [O'CALLAGHAN J:] I beg your pardon. I'm sorry, Mr Pesutto. Is your evidence that as you were … being driven … to Colac, you thought it was still possible that Mrs Deeming had been involved in the organisation or actions of the Nazi protesters?---No, your Honour. I'm – I'm simply trying to say I – I didn't know. I didn't know what the facts were at that point, other than some media reporting and some discussions with clients. So what this statement is is me thinking what would an ideal outcome be given this, given the media reporting, obvious feeling in the party. But, your Honour, this is prior to actually having discussions with my staff.
>
> [O'CALLAGHAN J:] So the ideal outcome would be she wasn't involved in the organisations or actions of the protesters but she nonetheless resigned?---Yes. That was the nature. But, your Honour, as I said, it was a – it's me thinking at the time what's one possible scenario which means that we won't have these problems in the future because it was one of the considerations I was concerned about and I think – I won't speak for them, but I think my leadership colleagues had during the course of the day about is this just going to keep happening. So a resignation was more a reflection of that, and the comments about assuring, well, I had hoped that would happen, and I had no reason – I'm not - - -
>
> [O'CALLAGHAN J:] When you say "is this going to keep happening", what did you at that point in time think was the "this" that was going to keep on happening?---Yes. It's – we've discussed it with Ms Chrysanthou that it's constant controversy emerging around Mrs Deeming.

668 The next day, Mr Pesutto was cross-examined about Ms Keen's interview by Ms Kay Soco from the "Soldiers of Christ" referred to in the EMD, as follows (T729.1–T730.21):

> [MS CHRYSANTHOU:] You were aware, weren't you, before you published the media release, that Ms Keen had been recorded as saying that she was not aware of the Soldiers of Christ background before she gave that interview?---I wasn't aware in relation to the Soldiers of Christ. I do recall a comment in general discussion on the Sunday that – to the effect that Ms Keen was trying to say that she doesn't check who she – who she gives interviews to and only does – does cursory checks or something to that effect. So I – I understood her to be somebody who regularly appeared on these types of platforms, what I understood to be extremist or far-right platforms, but didn't bother checking, and that was my understanding.
>
> So when you say that "she was trying to say", she had been recorded as saying, hadn't she, that she didn't do detailed checks of the people who she conducted interviews with?---Yes. Something to that effect.
>
> And you understood, didn't you, that she would give an interview to, basically, anyone?---I understood that's what she was saying. I found it incredible that someone would say that.
>
> Right. But you did understand that's what she had been saying?---Yes.
>
> And you had no information to the contrary, did you?---No. But I didn't believe what she was saying.
>
> How would you rationally form a view as to whether you believe that or not, based on the information you had about Ms Keen up until that point on Sunday?---Looking at the material we had at that time – which, your Honour, in the circumstances, was across the Sunday – so not a lot of time – but again I've explained the urgency of the matter – I – I was convinced that the combination of things we did know on Sunday about her was serious enough to base an expulsion motion for the reasons I've said.
>
> All right. Can you answer my question now. You had no reasonable basis, based on what you knew that day, to disbelieve Ms Keen's statement to the effect that she would give interviews to anyone?---I – I thought it was a threadbare statement. If you are giving interviews on various platforms, you're posting a Barbie-doll image, you're being pictured with a – a well-known anti-Semite, that – that was a hard thing to believe, and I didn't accept it.
>
> …
>
> MS CHRYSANTHOU: You had no basis to form the view, rationally, that Ms Keen was a liar?---I wasn't calling her a liar. I just said I didn't believe it; that's a different thing.

669 The next day, day 10 of the trial, Mr Pesutto was cross-examined about why the additional (exculpatory) material was omitted from the hard copy version of the Pink News article that was attached to the EMD, as follows (T822.42–T823.43):

> [MS CHRYSANTHOU:] Now, I want to suggest to you that at the time you sent out the dossier – or the dossier was sent out at 6.01 pm to the membership, you knew that the last two pages of the pink news article had been deleted?---Well, yes. It was – it was just the one page.
>
> And you knew that in deleting that, the context of the Gariepy interview with Ms Keen was completely altered?---No, I don't accept that, your Honour. The links were there.
>
> You knew that by the time it was sent to members at 6.01 pm, the denial by Ms Keen about her knowledge of the interviewer's right-wing associations had been deleted?---I don't accept that, your Honour. The full links were there.
>
> I'm not asking about the links. I'm asking about the line that I showed you, that has appeared in repeated versions of the dossier throughout the day, that Miss Keen denied knowledge of her interviewer's right-wing associations, or word to that effect, was deleted in the final draft that was sent to the MPs?---Well, it wasn't deleted. It wasn't included. I – subject to the language that Ms Keen actually used in the article, I would accept that.
>
> And you knew – well, were you part of that decision to delete that?---No.
>
> Bu you know - - -?---And would have – sorry, Ms Chrysanthou. I wouldn't have had a problem if the whole article went in because the links were there. And I knew – as with the broader debate around this issue, I knew that it would be a fairly spirited debate in the party room ultimately when it got there, so I had no misapprehension that members would consider the document carefully.
>
> The context of the Angie Jones tweets and her condemnation, or words to that effect, of the Nazis in her tweets appeared in earlier versions of the dossier that day, didn't they?---I believe it may have, your Honour.
>
> And you knew at the time it was sent to members at 6.01 that that context and that condemnation had been removed?---It appears that it obviously had. But again, like the Gariepy article, it was very easy for MPs to access Ms Jones Twitter account.
>
> [O'CALLAGHAN J]: But that wasn't the question, Mr Pesutto. The question was about whether you knew that it had been removed?---Well, I take it it had been removed.
>
> [O'CALLAGHAN J:] Sorry?---I accept that it had been removed.
>
> [O'CALLAGHAN J:] But even that's not - - -?---And I believe I would have known it, but again - - -
>
> [O'CALLAGHAN J:] But that's not responsive either. Did you know at the time that it has been removed?---I can't recall specifically recollecting, "Oh, that has been removed." But like the full article, I wouldn't have had a problem with the whole thing going in, because my concern with that tweet always was what it conveyed as a tweet on its own, irrespective of the context of the tweet exchange.

670 Ms Chrysanthou invited me to find that on many occasions when Mr Pesutto gave such evidence, and did not answer the question asked of him, he did so deliberately to avoid giving evidence unhelpful to his defence, and that he was an untruthful witness in many aspects of his evidence.

671 I have given anxious consideration to the many submissions made by Ms Chrysanthou along those lines in respect of significant parts of his evidence.

672 Mr Pesutto is a qualified solicitor, so he is aware of his duties to the court as an officer of it.

673 Ultimately, however, I am unable to conclude that he gave dishonest evidence about his subjective belief on the public interest question, as infuriatingly unresponsive as much of his evidence was.

674 Despite the unsatisfactory nature of many of his answers in cross-examination, I am satisfied that Mr Pesutto subjectively, in fact, believed that publication of each of the five matters was in the public interest.

675 The critical question is whether that belief was reasonable. If it was not, the defence fails.

676 It is to that question that I now turn.

Was Mr Pesutto's subjective belief that publication of each of the impugned publications was in the public interest a reasonable belief?

677 For the reasons that follow, I have determined that Mr Pesutto has not established the public interest defence in relation to each of the impugned publications and it fails.

678 The reasonableness of Mr Pesutto's belief is to be assessed, among other things, against the seriousness of the imputations carried by each of the impugned publications (see s 29A(3)(a)). The imputations that I have found carried in this case in respect of the media release, the 3AW and ABC interviews, the press conference and the EMD are self-evidently serious. For the sake of convenience, I set them out here:

> *In respect of the media release*:
>
> The imputation found to be conveyed is that Mrs Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she knowingly associates with neo-Nazis.
>
> *In respect of the 3AW interview*:
>
> The imputation found to be conveyed is that Mrs Deeming associates with Nazis and is thus unfit to be a member of the Parliamentary Liberal Party.
>
> *In respect of the ABC interview*:
>
> The imputation found to be conveyed is that Mrs Deeming knowingly associates or sympathises with neo-Nazis and white supremacists and is thus unfit to be a member of the Parliamentary Liberal Party and the Liberal Party.
>
> *In respect of the press conference*:
>
> The imputation found to be conveyed is that Mrs Deeming participated in a rally and knowingly worked with Ms Keen and other organisers to help them promote their odious Nazi agenda and their white supremacist and ethno-fascist views.
>
> *In respect of the expulsion motion and dossier*:
>
> The imputations found to be conveyed are that:
>
> (a) Mrs Deeming had so conducted herself on 18 March 2023 in relation to a public rally that it warranted her expulsion from the Victorian Parliamentary Liberal Party; and
>
> (b) Mrs Deeming conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by organising, promoting and attending a rally on 18 March 2023.

679 With respect to the EMD imputations, Mr Pesutto deposed that he intended to convey those imputations and believed them to be true. See [132] of his 27 May 2024 affidavit.

680 Mr Pesutto also deposed that he did not intend to convey imputations (a)–(d) above, which I have found were carried by the four other publications, respectively. See his 27 May 2024 affidavit at [104] (in respect of the media release); [120] (in respect of the 3AW interview); [123] (in respect of the ABC interview); [124] (in respect of the press conference).

681 But whether he intended to convey the imputations that I have found were carried or not, the risk of those serious meanings being conveyed about Mrs Deeming necessitated that he take care to ensure that the factual matters upon which he sought to base his explanation as to why he proposed to move for Mrs Deeming's expulsion had proper or sufficient foundation (cf *Russell (No 3)* at 441 [377]).

682 In the case of the media release, the 3AW and ABC interviews and the press conference, when bandying around words like "Nazi" and "Nazi sympathisers" and people who "associate" with them or "help" them and the like, it was incumbent on Mr Pesutto to be careful not to convey a meaning that he did not intend. As the cases I refer to above show, the use of loose language provides greater opportunity for the ordinary reasonable reader to infer adverse meaning from the published matter than the use of precise and unambiguous language. And Mr Pesutto knew as much.

683 Despite that, he did not take care with his language in the media release, 3AW interview, ABC interview or press conference, and with respect to all impugned publications, he did not take care to ensure that the factual matters upon which he sought to base his explanation as to why he proposed to move for Mrs Deeming's expulsion had proper or sufficient foundation.

684 At all relevant times, including when he gave approval to release the EMD to the media, Mr Pesutto had before him, or available to him, evidence or material that a reasonable person would understand to make it readily apparent, contrary to Mr Pesutto's claims on the day of his media "blitz" (20 March), that neither Ms Keen nor Ms Jones were Nazis, Nazi sympathisers, neo-Nazis or anything of the sort; that they in fact staunchly opposed such people and views; and that Ms Keen's "association" with right-wing extremists and the like was an association only in the sense that she had agreed to be, and was, interviewed by individuals (like Mr Gariépy and Ms Soco from Soldiers of Christ).

685 Mr Pesutto claimed that he had read the whole of the Pink News article, although whether he did, or did not, is not necessary to decide. Anyone who read the whole of it could only conclude, on the face of the article, that far from sharing the views of right-wing extremists, Ms Keen vehemently opposed them.

686 The two pages of the hard copy version of the article excluded from the final version of the EMD refer to Ms Keen (aka Posie Parker) as a prominent "gender-critical feminist" who:

> (a) participated in a "brave", "interesting" and "brilliant" video with a French-Canadian white nationalist (Mr Gariépy).
>
> (b) confidently and bravely debated with anti-feminist right wingers (like Mr Gariépy);
>
> (c) brought the truth about genderism to a wider audience, even if it might be an audience of people not liked by gender critical women;
>
> (d) sought to protect the interests of children;
>
> (e) engaged with anti-feminists on the right and poked and prodded over a shared opposition to extremist genderism;
>
> (f) said she had been asked to go on Mr Gariépy's show by his assistant, that she gave his channel a cursory look and nothing stood out as anything unusual or problematic, and that she avoided researching or policing the entire spectrum of someone's views, because the mutilation of healthy children's bodies is too important;
>
> (g) was quoted saying that white supremacy and racism have no place in a civilised society, that she abhorred those views and the people that hold them; and that she is a free speech advocate;
>
> (h) thought that dialogue, even with those with the most odious prejudices, is essential.

687 In the course of preparing these reasons, I have rewatched the video of the interview between Ms Keen and Mr Gariépy (Ex R92). It is sufficient to say that no reasonable person could watch it and conclude that Ms Keen shared his racist or extreme right-wing views. To the contrary, Ms Keen strongly disagrees with and expresses scepticism about a range of rather odd views expressed by Mr Gariépy, including by way of example only, his view that women have more rights than men; that "I've seen enough crazy women in my life"; and that "when men beat their wives they go easy on them" and so on (starting around the 22 minute mark and ending just before the 33 minute mark). At times, she is visibly, as well as verbally, sceptical of the views espoused by Mr Gariépy during the interview.

688 With respect to Ms Keen's interview with Ms Soco from the Soldiers of Christ, it was obvious to the person who drafted the initial versions of the "Moira Deeming Fact Sheet" (that became the EMD), that "[Ms] Keen denied prior knowledge of [Ms Soco's] far-right affiliations". But that observation, along with the rest of the Pink News article and other material exculpatory of Mrs Deeming, Ms Keen and Ms Jones, was inexplicably omitted from the final version of the EMD that was provided to Parliamentary members of the Liberal Party and then to the media, and never mentioned by Mr Pesutto in any of the impugned publications.

689 As I have said, the champagne video was the subject of a deal of attention during the trial. In closing submissions, senior counsel for Mr Pesutto described Mrs Deeming's conduct during the video as "disgraceful". It is quite evident from watching the video, and from the extracts of the transcript set out above, that it was no such thing.

690 A considered viewing of the champagne video would also have disabused the ordinary reasonable viewer of the notion that Ms Keen, Ms Deves, Ms Jones or Ms Deeming shared right-wing views or associated with neo-Nazis or anything vaguely of the sort.

691 The video starts with Ms Keen remarking that the LWS rally had been a success.

692 So far as Mrs Deeming is concerned (and her views were implicitly shared with the others) these things are clear:

> (a) she did not know who the masked men were;
>
> (b) the masked men were not welcome;
>
> (c) she initially thought they were either "antifa" or trans rights activists;
>
> (d) the Nazi salute, even though "only a split second", was "horrifying"; and
>
> (e) the police had made a "massive mistake" by letting the masked men in because "all of us [women] were terrified".

693 Mr Pesutto swore that he had watched the whole of the champagne video on 19 March. I was invited by Mrs Deeming's counsel to accept that evidence. But whether he watched it or not, no ordinary reasonable viewer would think that Mrs Deeming was, as Mr Pesutto put it in the press conference, choosing to celebrate "the ugly scenes" at the LWS rally (see annexure B lines 77–79 and 298–299). They were doing precisely the opposite.

694 Mr Pesutto has repeatedly said that he has never believed that Mrs Deeming was a Nazi, a Nazi sympathiser, a neo-Nazi or that she associated with such people. The evidence in that regard is referred to in footnote 1132 of RCS (at [48.10]). (That said, he swore in his 27 May 2024 affidavit that he "believed it to be true" and "intended to convey" in the EMD that on 18 March Mrs Deeming associated with neo-Nazi activists, but he recanted that evidence in his examination-in-chief – see below at [745]–[746].)

695 In those circumstances, there was always a need for Mr Pesutto to take care not to convey, by the use of loose or careless language, the impression that she was a Nazi, a Nazi sympathiser, a neo-Nazi or that she associated with such people, whether in considered documents like the media release or in the heat of the moment of the media interviews. But he did not take such care, and it is precisely because he did not do so that he uttered words which conveyed the serious imputations the subject of my findings above.

696 The perceived urgency to publish, it seems to me, even on Mr Pesutto's own evidence, was driven more by a fear of the political damage that would be inflicted upon his fledgling leadership by the then Premier, than by his professed concern that the party and the Parliament would be brought into disrepute, as he claimed (see, eg, his 27 May 2024 affidavit at [105]). By way of example only, at the 19 March meeting, Mr Pesutto referred to his "concern[] about where [Premier] Andrews is going to take it this week" because he has "been itching for something to clobber me with and this is it, it's coming". He was concerned about being clobbered, including because "Andrews came out strong today on that tweet, right, which was signalling what's to come". (The tweet to which he referred is set out at [159] above.)

697 In his 27 May 2024 affidavit Mr Pesutto deposed as follows in relation to Mr Andrews (at [112]):

> It was important to me that I was proactive in explaining the motion to expel to the Victorian public, so that it was not mischaracterised or misrepresented by others. At the time, Daniel Andrews was the Premier of Victoria. I considered him an able politician who should not be underestimated when it came to taking political advantage of matters such as this. I was concerned that if I did not take action, and quickly, he would seek to link the rest of the Party to the neo-Nazis on the steps of Parliament, and he would do so using Mrs Deeming's presence at the Rally and her public association with Ms Keen and Ms Jones. Mrs Deeming had already been the subject of controversy and comment from Mr Andrews, who described her views as 'hateful' when she was preselected in July 2022. Under Mr Andrews, it appeared to me, the Government had taken a number of opportunities in the Parliament, especially through Ministers' statements during question time, to focus on the issues Mrs Deeming was drawing us into.

698 Further, in the course of his cross-examination, Mr Pesutto gave this evidence (T620.18–21):

> [MS CRYSTHANOU:] Well, what I want to suggest to you is that you wouldn't move to expel a member of parliament merely because, at that time, Mr Dan Andrews had said something critical about them?---Not – not as a singular factor, your Honour, but it – it would be, and was – it would be, and was, a consideration in this particular matter.

699 But in any event, the perceived urgency was not objectively reasonable because, if I may borrow from what Lee J said in *Russell (No 3)* at 441 [381], "it was not a [matter] in relation to which there was an immediate need for the public to know, outweighing the need to take further care as to the detail of what was published". Mr Pesutto said that it was important to him that he "was proactive in explaining the motion to expel to the Victorian public, so that it was not mischaracterised or misrepresented by others", but the motion to expel was to be addressed to the Parliamentary Liberal Party, not the public, and the need to take care in formulating the grounds for expulsion and explaining them to the public in advance of their finalisation, I would have thought, should reasonably have outweighed the public's immediate right to know, despite the risk of someone in the party leaking the EMD.

700 Mr Pesutto also paid no heed to, nor did he mention in any of the impugned publications, the fact that Mrs Deeming vehemently denied what was put against her, and in particular (as she told him at the 19 March meeting) that:

> (1) nobody she worked with had any sympathies or liaisons with Nazi groups;
>
> (2) on the contrary, the people she was "associating with" were Jews, lesbians, atheists and radical feminists;
>
> (3) she was happy to "condemn everything" and "to fix" the problem of "people thinking we turn the other cheek to Nazis";
>
> (4) the "Nazi thing" was "just so out of left field", but "it's easy to condemn, like just flat out";
>
> (5) she did not "have a problem at all, and I look forward to denouncing Nazism and … anything similar and any accusations of paedophilia for the trans community" because she did not believe those things.

701 Mr Pesutto also failed to mention or to disclose Mrs Deeming's 18 March tweet, where she referred to "the horrible Nazi salute".

702 The failure to mention any of these matters (which relate to "the [other] person's side of the story" within the meaning of s 29A(3)(g) of the Act) is particularly acute in the context of the 3AW interview, where Mr Mitchell specifically asked Mr Pesutto "did she [Mrs Deeming] object to what you told her [about bringing the expulsion motion]"?, and he replied that he would not "go into the details of the discussion". That, it seems to me, is a disingenuous response, and is a further circumstance that weighs against Mr Pesutto's belief that the publication of that matter (the 3AW interview) was in the public interest being a reasonable one. In my view, it was not.

703 It follows that the public interest defence under s 29A of the Act fails in respect of each impugned publication.

Honest opinion

704 Section 31 of the Act relevantly provides:

> **31 Defences of honest opinion**
>
> (1) It is a defence to the publication of defamatory matter if the defendant proves that—
>
> (a) the matter was an expression of opinion of the defendant rather than a statement of fact; and
>
> (b) the opinion related to a matter of public interest; and
>
> (c) the opinion is based on proper material.
>
> (2) …
>
> (3) …
>
> (4) A defence established under this section is defeated if, and only if, the plaintiff proves that—
>
> (a) in the case of a defence under subsection (1)—the opinion was not honestly held by the defendant at the time the defamatory matter was published; or
>
> (b) …
>
> (c) …
>
> (5) For the purposes of this section, an opinion is ***based on proper material*** if—
>
> (a) the material on which it is based is—
>
> (i) set out in specific or general terms in the published matter; or
>
> (ii) notorious; or
>
> (iii) accessible from a reference, link or other access point included in the matter (for example, a hyperlink on a webpage); or
>
> (iv) otherwise apparent from the context in which the matter is published; and
>
> (b) the material—
>
> (i) is substantially true; or
>
> (ii) …
>
> (iii) …
>
> (6) An opinion does not cease to be based on proper material only because some of the material on which it is based is not proper material if the opinion might reasonably be based on such of the material as is proper material.

705 As Leeming JA said in *Massoud* at 516 [170]:

> Of course, the point of the defence of honest opinion is that it is a defence for what would otherwise be actionable defamation. It is an aspect of the balance struck by the law to the effect that sometimes unjustified comment which injures a plaintiff's reputation may be made without liability. When relying on this defence, the defendant needs to establish that the defamatory matter is an opinion, based on proper material, in the public interest, and even if all those are established the defence will not be available if the plaintiff establishes that the opinion was not honestly held.

706 Mrs Deeming admitted that each of the impugned publications related to a matter of public interest, but denied that they were an expression of Mr Pesutto's opinions and said they were not in any event based on proper material and were not honestly held.

The media release, the 3AW and ABC interviews and the press conference publications

707 I turn first to the media release, the 3AW and ABC interviews and the press conference publications.

708 I accept Mr Pesutto's submission that under the Act, where a publication will have been understood by reasonable recipients as conveying expressions of opinion (supported by facts that are stated or otherwise sufficiently indicated), a defence of honest opinion under s 31 is available in respect of the whole matter, if the requirements of the section are satisfied (RCS [28.14]).

709 The issue is not whether the defamatory meaning was an expression of opinion rather than a statement of fact, but whether the matter published insofar as it conveys the defamatory imputation is an expression of opinion. See *Feldman v Polaris Media Pty Ltd* (2020) 102 NSWLR 733 at 747 [66]; and *Massoud* at 521 [195].

710 I accept Mr Pesutto's submission in relation to each of the media release, the 3AW and ABC interviews, and the press conference, that each was an expression of his opinion that Mrs Deeming is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under his leadership, and that each of those impugned publications was an expression of Mr Pesutto's opinion, on the basis of facts that were set out for assessment.

711 Justices Gummow, Hayne and Heydon in *Channel Seven Adelaide Pty Ltd v* ***Manock*** (2007) 232 CLR 245 at 271 [48] approved this quotation from Odgers on *Libel and Slander* (6th ed, 1929) at pages 166–7:

> Sometimes … it is difficult to distinguish an allegation of fact from an expression of opinion. It often depends on what is stated in the rest of the article. ***If the defendant accurately states what some public man has really done, and then asserts that 'such conduct is disgraceful', this is merely the expression of his opinion, his comment on the plaintiff's conduct. So, if without setting it out, he identifies the conduct on which he comments by a clear reference. In either case, the defendant enables his readers to judge for themselves how far his opinion is well founded; and, therefore, what would otherwise have been an allegation of fact becomes merely a comment.*** But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what that conduct was, this is an allegation of fact for which there is no defence but privilege or truth.
>
> The same considerations apply where a defendant has drawn from certain facts an inference derogatory to the plaintiff. If he states the bare inference *without the facts on which it is based*, such inference will be treated as an allegation of fact. But if he sets out the facts correctly, and then gives his inference, stating it as his inference from those facts, such inference will, as a rule, be deemed a comment.
>
> (Bolded emphasis added.)

712 Here, in my view, to adopt what their Honours said in the emphasised language in that passage, each of the 3AW and ABC interviews and the press conference publications (that is, the "matters") is properly to be described as an expression of Mr Pesutto's opinion, for the reasons set out in them, by the conduct therein described, that Mrs Deeming should be expelled from the party, variously because her position was untenable, her conduct was not consistent with Liberal Party values or with his values.

713 As Mr Pesutto's counsel said in their written closing submission (RCS [29.4]):

> If that submission is accepted, then honest opinion is the relevant affirmative defence, not justification or contextual truth (which are defences to publications of matters of fact, not to publications of expressions of opinion). Mr Pesutto's contextual truth defence is a fall-back defence, that only needs to be considered if the Court rejects his submission that each of the Publications will have been reasonably understood as an expression of his opinion.

714 There is, however, a fundamental problem with Mr Pesutto's honest opinion defence in respect of the media release, the 3AW and ABC interviews and the press conference publications, because it was not responsive to any of the imputations pleaded by Mrs Deeming, including those pleaded imputations which I have found to have been carried. This point was raised by Ms Chrysanthou in her closing address at T1398.15; T1500.22–31; and T1503.1–44.

715 As Abraham J said in *Nassif* at [180]:

> The defence of honest opinion must be responsive to an applicant's pleaded imputations, because by the time the Court comes to consider it, the question of meaning will already have been determined adversely to the respondent: *Manock* at [83]. The defence must respond to the level of substance of the imputation, not the particular form of words the imputation has been articulated divorced from its context within the matter: *Harbour Radio [Pty Ltd] v Ahmed* [(2015) 90 NSWLR 695] at [44]; *O'Brien v Australian Broadcasting Corporation* [2016] NSWSC 1289 at [45]-[46] , [49]-[50].

716 As Gummow, Hayne and Heydon JJ explained in *Manock* at 288 [83]:

> [T]he defendant's contention that in this case the meaning pleaded by the plaintiff is irrelevant to the defence of fair comment at common law is wrong. It is wrong because by the time the trial judge comes to consider the fair comment defence the question of meaning will have been decided adversely to the defendant. The meaning found is the comment to be scrutinised for its fairness. An initial question will be whether the ordinary reasonable viewer would have understood that the meaning found to have been conveyed was conveyed as comment [citations omitted]. Another question would be whether that meaning was objectively fair. Another would be whether it was based on true facts. Each of the questions must be answered by treating the comment as being the 28 words in the meaning which the court found. If the defendant's contention were not wrong, it would be open to the defendant to contend that the promotion bore some meaning other than the defamatory meaning which the trial judge had already found, which is impossible. What the Privy Council said in *Lloyd v David Syme & Co Ltd* [[1986] AC 350 at 365 per Lords Keith of Kinkel, Elwyn-Jones, Roskill and Griffiths], in a case on the *Defamation Act 1974* (NSW), is equally applicable to the common law:
>
> > "Comment must have a meaning, and ex hypothesi the [trier of fact is] proceeding on the footing that its meaning is defamatory in the sense of the pleaded imputations which have been found established."

717 Paragraph 30.4 of RCS illustrates the flaw in Mr Pesutto's honest opinion defence in seeking to contend that the media release, the 3AW and ABC interviews and the press conference publications bore some meaning other than the defamatory meaning which I have already found, which, as Gummow, Hayne and Heydon JJ said in *Manock*, "is impossible".

718 Paragraph 30.4 contended as follows:

> Mr Pesutto's evidence was that the following were all his honest opinions, and he believed them to be true:
>
> (a) the Media Release Imputation;
>
> (b) the 3AW Imputations;
>
> (c) the ABC Imputation; [and]
>
> (d) the Press Conference Imputations, as well as imputations [19.6], [19.7] and [19.8] in the [statement of claim].
>
> …

719 The "Media Release Imputation" was defined in Mr Pesutto's defence as:

> Deeming, by reason of having been involved in organising, promoting and participating in, and attending, a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

720 The "3AW Imputations" were defined in Mr Pesutto's defence as:

> - Deeming, by reason of having helped to organise and promote a protest rally and associating with persons with known links to Nazis, Nazi sympathisers, far right extremists and/or white supremacists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership; and
>
> - Deeming, by reason of not having left a protest rally that she had helped to organise and promote when neo-Nazis turned up, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

721 The "ABC Imputation" was defined in Mr Pesutto's defence as:

> - Deeming, by reason of having attended and been actively involved in the organisation and promotion of a protest on the steps of the Victorian Parliament at which there were speakers with known links with neo-Nazis and white supremacists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

722 And the "Press Conference Imputations" were defined in Mr Pesutto's defence as:

> - Deeming, by reason of having worked with organisers of a rally with known and established links with people who have Nazi sympathies and who promote white supremacist and ethno-fascist views, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership;
>
> - Deeming, by reason of not having left a protest rally that she had helped to organise when neo-Nazis arrived, and not immediately disowning or disassociating from them, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership; and
>
> - Deeming, by celebrating her involvement in a protest rally, which she helped to organise with people who have shared platforms and viewpoints with people who promote Nazi views or sympathies, and which was attended by neo-Nazis, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership

723 The only imputations pleaded **against** Mr Pesutto by Mrs Deeming (as distinct from the defamatory imputations he pleaded) which he confronted in his honest opinion defence were 19.6, 19.7 and 19.8 (being those imputations that Mr Pesutto pleaded were, if carried, substantially true and deposed that he intended to convey, believed to be true and were his opinion).

724 Put another way, and taking the media release as an example, the true question is whether s 31 is a defence to that publication insofar as it conveyed the imputation that Mrs Deeming is unfit to belong to the Parliamentary Liberal Party because she knowingly associates with neo-Nazis. That question, and the cognate questions with respect to the 3AW and ABC interviews and the press conference publications, were never addressed by Mr Pesutto. And it is because Mr Pesutto's defence of honest opinion is not responsive to Mrs Deeming's pleaded imputations which I have found to have been carried that it is bound to fail.

The EMD

725 The position with respect to the EMD is different because Mr Pesutto admitted that it carried the defamatory imputations that Mrs Deeming had so conducted herself on 18 March 2023 in relation to a public rally that it warranted her expulsion from the Victorian Parliamentary Liberal Party (24.1) and had conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by organising, promoting and attending a rally on 18 March 2023 (24.3). And, as I have found, Mr Pesutto's "Expulsion Motion Imputations", along very similar lines, were carried. I will set them out again for the convenience:

> - Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by organising, promoting and attending a rally where Kellie-Jay Keen (also known as Posie Parker) was the principal speaker, in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists; and
>
> - Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by meeting with and publishing a video with Kellie-Jay Keen, Katherine Deves and Angie Jones.

726 And his submissions with respect to the EMD were directed to the right question – is s 31 a defence to the publication of the EMD is so far as it conveyed those imputations?

727 The first question is whether the defamatory matter was a statement of opinion rather than fact.

728 Again, that question is not difficult in this case. The whole purpose of the EMD was in substance for Mr Pesutto to say to the members of the Parliamentary Liberal Party, "I think Mrs Deeming should be expelled from the party for the reasons set out in this dossier", so the "matter" is properly to be described as an expression of his opinion that, for the reasons set out in it, by the conduct therein described, she should be expelled from the party.

729 Mrs Deeming admitted that the matter is of public interest.

730 The next question is whether the opinion was "based on proper material".

731 As White J explained in *Dutton v Bazzi* [2021] FCA 1474 at [113], "s 31 requires that the proper material on which the opinion is based be stated in or, referred to, in the impugned matter or be otherwise notorious". His Honour continued at [120]–[121]:

> The determination of whether a fact has been referred to, or is sufficiently indicated in, an impugned matter or is otherwise notorious should have regard to the rationale for that requirement. For Australia, that rationale was stated by the High Court in *Pervan v North Queensland Newspaper Co Ltd* [1993] HCA 64; (1993) 178 CLR 309 and in Manock. In *Pervan*, the majority (Mason CJ, Brennan, Deane, Dawson, Toohey and Gaudron JJ) said at 327:
>
> > [The defence of] fair comment is not lost by the absence of a statement of the facts on which the comment is based provided the jury is satisfied that the facts on which the comment is based are sufficiently indicated or notorious *to enable persons to whom the defamatory matter is published to judge for themselves how far the opinion expressed in the comment is well founded.*
> >
> > …
>
> This statement of the rationale was endorsed in *Manock*: by Gleeson CJ at [5] and by Gummow, Hayne and Heydon JJ at [35], [45], [47] and [72]. At [35], the plurality quoted a passage from the judgment of Jordan CJ in *Goldsbrough v John Fairfax* at 531-2:
>
> > [I]t must appear that they are opinions stated by the writer or speaker about facts, *which are at the same time presented to, or are in fact present to, the minds of the readers or listeners, as things distinct from the opinions, so that it can be seen whether the opinions are such that they can fairly be formed upon the facts …*

732 As White J also said at [150]:

> However, while the opinion must be capable of being rationally based on the proper material relied upon, it is not the case that the ordinary reasonable reader must reasonably reach the same opinion as did the commentator. The opinion may be extreme or even insulting and not one shared by ordinary reasonable readers but nevertheless be capable of being rationally based on the proper material.

733 (I interpolate to say that to the extent that I suggested otherwise in obiter observations in *Greenwich* at [210]–[215], and that the respondent's state of mind is relevant to that question, I was wrong.)

734 Mr Pesutto pleaded 12 particulars of proper material in respect of the EMD (at paragraph 48.3 of his defence) as follows:

> (iii) The opinion was based on the following material that was set out in the Expulsion Motion and Dossier in specific or general terms, namely:
>
> (A) The Rally held on the steps of the Victorian Parliament on 18 March 2023.
>
> (B) Deeming's position as a member of the Victorian Parliament and (at the time) a member of the Victorian Parliamentary Liberal Party.
>
> (C) Deeming's involvement in organising and promoting, and attending, the Rally.
>
> (D) The principal speaker at the Rally was Keen (also known as Posie Parker), who runs an organisation known as Standing for Women.
>
> (E) Keen is known to be publicly associated with far right-wing extremist groups and neo-Nazi activists, including Jean-François Gariépy (a far-right activist who advocates for a white ethno-state and has made videos with neo-Nazis and former Ku Klux Klan grand wizard David Duke), Soldiers of Christ Online (a far-right network), Hans Jørgen Lysglimt Johansen (a Norwegian neo-Nazi, anti-semite and Holocaust denier).
>
> (F) Keen has used a Barbie doll wearing a Nazi military uniform as her profile picture on an online profile, and has posted an image online that equates expressions of LGBTIQA+ pride with the conduct of Nazi Germany and the Gestapo.
>
> (G) Standing for Women organised an event on 16 January 2023 at which one of the speakers, Lisa Morgan, quoted Adolf Hitler.
>
> (H) Deeming facilitated Keen's presence at the Rally by escorting her through the secured carpark of Parliament House.
>
> (I) At the Rally, a group of neo-Nazis, organised by the National Socialist Network, occupied the steps of the Victorian Parliament and performed the Nazi salute while displaying a banner bearing the words, 'DESTROY PAEDO FREAKS'.
>
> (J) Deeming did not leave the Rally when the neo-Nazis attended.
>
> (K) After the Rally, at around 4.41pm on 18 March 2023, Jones posted a Tweet with the words, 'Nazis and women want to get rid of paedo filth. Why don't you?'
>
> (L) After the Rally, on 18 March 2023, Deeming met and published a video with Keen, Jones and Katherine Deves, in which they drank champagne and Deeming did not roundly condemn the neo-Nazis who had attended.

735 And Mr Pesutto further pleads that each of those 12 particulars of proper material is substantially true (within the meaning of s 31(5)(b)(i)), for the reasons set out in annexure A to his defence.

736 There are a number of problems with the proposition that Mr Pesutto's opinion that Mrs Deeming "had brought discredit on the Victorian Parliament and the Victorian Parliamentary Liberal Party and should be expelled from the Victorian Parliamentary Liberal Party" was rationally based on the proper material relied upon and that each of the 12 particulars listed above is true.

737 First, as the evidence summarised above at [94]–[128] demonstrates, it is not true to say that the neo-Nazis attended the LWS rally (referred to as such in paragraph 5 of the annexure to the EMD). As Ms Chrysanthou put it in her closing address (T1506.36–43):

> And the biggest problem with the opinion defence and the proper material is the definition of "rally". That's one of the biggest problems. That all of the proper material, as did the publications, proceed on the basis that the Nazis attended my client's rally, the LWS rally. And we say that all of the objective evidence, the evidence of witnesses, the unchallenged evidence of witnesses in the case, contemporaneous documents all proves that to be incorrect. And so that underlying problem infects the entire opinion defence.

738 Secondly, Mrs Deeming had a role in organising and promoting, and she attended, the LWS rally, but there was no proper material available that showed that she organised, promoted and attended "the Rally" which was "attended by neo-Nazis". As Mrs Deeming pleaded in her reply at sub-paragraph 2.4(xx), she "did not leave the LWS Rally when (it is alleged) the Nazis attended because they did not attend or participate in the LWS Rally".

739 Thirdly, as I have explained earlier in these reasons (at [686]–[687]), if anyone had bothered to read the Pink News article, or even to watch the video interview of Ms Keen by Mr Gariépy, they would surely have been disabused of the idea that Ms Keen "associated with far-right extremists", which is the claim made in section B of annexure A to the EMD. As Mrs Deeming's counsel put it in ACS at [839]:

> (E) is false because [Ms] Keen is not known to be publicly associated with far-right wing extremist groups and neo-Nazi activists. The evidence establishes that she gave one interview to Mr Gariepy in which she argued with him and gave no indication of agreeing with any white ethno-state views. She [said she] did not know about Soldiers of Christ before speaking to them and nor has it been proved who they are or what they stand for. There is no evidence that Mr Johansen is a neo-Nazi, anti-semite or Holocaust denier. Taking one photograph with him, in an unknown context that he posted on social media does not establish any such association.

740 Fourthly, there was no evidence that Mr Gariépy had made videos with neo-Nazis and former Ku Klux Klan grand wizard Mr David Duke.

741 Fifthly, particulars F, G and K concern actions of persons other than Mrs Deeming, and could not on their own provide a rational basis to say that Mrs Deeming should be expelled from the party.

742 Sixthly, particular L is not a model of clarity. Quite what "roundly condemning" means was never explained, but L is not an accurate depiction of the video. As I said earlier in these reasons, a considered viewing of the champagne video would have disabused the ordinary reasonable viewer of the notion that Ms Keen, Ms Deves, Ms Jones or Mrs Deeming shared right-wing views or associated with neo-Nazis or anything vaguely of the sort, and it would have been clear to any ORV that Mrs Deeming and her colleagues on the video did condemn the "masked men" who terrified them. For example, anyone who had in fact watched the video would have heard Mrs Deeming say:

> Obviously there was that group of masked men who came in, we didn't know who they were but we were concentrating on these people at the front and you know one woman was knocked unconscious and taken to hospital. I got kicked in the shins a whole bunch of times.
>
> But they were dealt with within you known under, under, under a minute each, we dealt with them we got rid of them and we just carried on and that's what we'll continue to do and it was just a fun day and it was really great.
>
> …
>
> Yes so the thing that I found very confusing was that we were assured by the police and as I say, it seems to us while we were there that everything was going well that the police were trying to help us and I think the majority were but when I was alerted to the fact that they were all these masked men coming towards us they were all in black we couldn't see their faces I thought that the trans rights activists had broken through the line and we're about to get attacked.
>
> I honestly just thought this is it yep I'm about to, we're all about to get attacked …
>
> …
>
> Best case scenario was a massive mistake by the police to let these unidentifiable masked men in because all of us women were terrified.

743 For those reasons, Mr Pesutto's defence of honest opinion in respect of the EMD fails.

744 In case it matters, I will also address Mrs Deeming's plea, the onus being on her to prove, that Mr Pesutto's defence is defeated in any event because he did not honestly hold the opinion (see s 31(4)(a) of the Act).

745 Mr Pesutto deposed in his 27 May 2024 affidavit at paragraph 132 as follows:

> In the Expulsion Motion and Dossier, I intended to convey, believed to be true, and it was my opinion that Mrs Deeming:
>
> (a) conducted herself in a manner likely to bring discredit on the Victorian Parliament or the Party, by organising, promoting and attending a rally where Ms Keen was the principal speaker, in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists;
>
> (b) conducted herself in a manner likely to bring discredit on the Victorian Parliament or the Party, by meeting with and publishing a video with Ms Keen, Ms Deves and Ms Jones;
>
> (c) had so conducted herself on 18 March 2023 in relation to a public rally that it warranted her expulsion from the Party;
>
> (d) had so conducted herself in associating with neo-Nazi activists on 18 March 2023 that it warranted her expulsion from the Party;
>
> (e) conducted activities in a manner likely to bring discredit on the Victorian Parliament or the Party by organising, promoting and attending a rally on 18 March 2023; and
>
> (f) conducted activities in a manner likely to bring discredit on the Victorian Parliament or the Party by publicly associating with neo-Nazi activists on 18 March 2023.

746 In examination-in-chief, Mr Pesutto gave this evidence (T556.38–T557.3):

> [DR COLLINS:] I'm going to hand you two documents. And just looking at the larger of those documents, do you recognise that as the affidavit that you swore in this proceeding on 27 May 2024?---Correct.
>
> And could I direct your attention please to paragraph 132 of the affidavit, which is on page 28?---Yes.
>
> Is there a clarification you wish to make in respect of subparagraphs (d) and (f) of that paragraph?---Yes, I do, Your Honour. I wish to change that. I did not intend to convey and never did that Mrs Deeming had conducted herself in associating with neo-Nazi activists on 18 March 2023, in the sense that it was never intended to denote a direct association. So I wish to remove the words, "Intended to convey," in that and in respect of paragraph (f) as well.

747 He was cross-examined about that evidence and paragraph 132 of his 27 May 2024 affidavit as follows (T825.43–T826.7):

> [MS CHRYSANTHOU:] I am just making sure that it's clear what you're saying. So at the time of publication of the dossier, did you believe it to be true that my client conducted activities in a manner likely to bring discredit on the Victorian Parliament or the party by publicly associating with Neo-Nazi activists on 18 March?---I – I did not believe that to be the case. I didn't intend to convey that.
>
> Thank you. I'm very sorry - - -?---Sorry.
>
> - - - for the confusion in my language, Mr Pesutto. Otherwise, putting aside (d) and (f), which we've clarified, I want to suggest to you what you say in paragraph 132 as to your belief in the truth of the matters in (a), (b), (c) and (e) is not true?---It is true, your Honour.

748 It may be thought to be passing strange that Mr Pesutto swore that in the EMD he "intended to convey, believed to be true, and it was my opinion that Mrs Deeming … had so conducted herself in associating with neo-Nazi activists on 18 March 2023 that it warranted her expulsion from the Party and … [had] conducted activities in a manner likely to bring discredit on the Victorian Parliament or the Party by publicly associating with neo-Nazi activists", and then swore in the witness box that he did not intend to convey either of those two things and did not believe them to be true, but in any event that was his evidence, and Ms Chrysanthou did not press him on it other than in the passage from the transcript extracted above.

749 I am not persuaded that his evidence in paragraph 132 was untrue.

750 Further, Mrs Deeming did not plead any ground of defeasance directed to the relevant question – namely, whether his opinion that Mrs Deeming had brought discredit on the Victorian Parliament and the Victorian Parliamentary Liberal Party and should be expelled from the Victorian Parliamentary Liberal Party was honestly held by him. Her particulars of defeasance at paragraph 2.4 of her reply were not directed to that question.

751 For those reasons, were it necessary to decide, I would find that Mrs Deeming had not established that Mr Pesutto did not honestly hold that opinion.

752 It follows that the honest opinion defence under s 31 of the Act fails in respect of each impugned publication.

***Lange* qualified privilege**

753 In light of Dr Collins's concession that the *Lange* qualified privilege defence would not yield a more favourable result for Mr Pesutto in a trial on s 29A on the current state of the authorities, it is not necessary to deal with it (T1517.7–22), other than to say that it fails in respect of each impugned publication.

Contextual truth

754 As his counsel conceded, Mr Pesutto's contextual truth defence was put as "a fall-back defence" that only needs to be considered if his submission that each of the publications will have been reasonably understood as an expression of his opinion were rejected. As I have explained, that submission is accepted, so it is unnecessary to consider the fall-back defence.

DAMAGES

Damages for non-economic loss – applicable principles

755 There was no dispute between the parties about the applicable principles in relation to an award of damages for non-economic loss.

756 As Mason CJ, Deane, Dawson and Gaudron JJ explained in *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 60–1, leaving specific economic loss and exemplary or punitive damages aside, there are three purposes to be served by damages awarded for defamation – (i) consolation for the personal distress and hurt caused to the plaintiff by the publication; (ii) reparation for the harm done to the plaintiff's personal reputation; and (iii) vindication of the plaintiff's reputation. As their Honours explained:

> The first two purposes are frequently considered together and constitute consolation for the wrong done to the [plaintiff]. Vindication looks to the attitude of others to the [plaintiff]: the sum awarded must be at least the minimum necessary to signal to the public the vindication of the [plaintiff's] reputation. The gravity of the libel, the social standing of the parties and the availability of alternative remedies are all relevant to assessing the quantum of damages necessary to vindicate the [plaintiff].
>
> (Footnotes and internal quotations omitted.)

757 And as Brennan J said at 72:

> Damages by way of vindication of reputation are not added to the damages assessed under other heads. Although an award of damages operates as a vindication of the plaintiff to the public and as consolation to him for a wrong done … the dual operation of an award does not require cumulative components of damages. The same sum can operate as vindication, compensation and solatium, for the amount of a verdict is the product of a mixture of inextricable considerations. The amount assessed under other heads may itself be sufficient in aggregate to provide the vindication required. The extent of the overlap depends on the circumstances. But the award in total must be sufficient to satisfy the purposes for which damages for defamation are awarded: vindication of reputation, compensation for injury to reputation and solatium for injured feelings.
>
> (Footnotes and internal quotations omitted.)

758 And as Rares J said in *Barilaro v Google LLC* [2022] FCA 650 at [296]–[297]:

> [I]n assessing general damages the Court is entitled to look at the whole of the conduct of the publisher from the time of publication to the time of the verdict … the mode and extent of publication, the fact that the defamatory statement was never retracted, the fact that the publisher never offered an apology and the fact that the defamatory statement had been persisted in to the end … those factors might increase the area of publication, the effect of the defamatory publication on those who read, saw or heard it and its vitality and capability of causing (further) harm to the [plaintiff].
>
> … the quantum of damages in a defamation action must be such that in case the libel, driven underground, emerges from its lurking place at some future date, he [the plaintiff] must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge. The award must also have regard to the grapevine effect of the publication complained of so as to ensure that the [plaintiff] recovers an appropriate amount of compensation …
>
> (Footnotes and internal quotations omitted.)

759 Pursuant to s 34 of the Act, in awarding any damages, the court must ensure that there is an appropriate and rational relationship between the harm sustained by an applicant and the award.

760 The maximum damages amount for non-economic loss that may be awarded in defamation proceedings is currently $478,500 (ss 35(1) and (3)).

761 The maximum amount may only be awarded "in a most serious case" (s 35(2)).

762 The maximum amount may be exceeded where aggravated damages are warranted, but only to the extent of the amount of the aggravation (s 35(2A)).

Aggravated damages – applicable principles

763 Mrs Deeming also seeks aggravated damages.

764 Pursuant to s 35(2B) of the Act, an award of aggravated damages, nowadays, is to be made separately to any award of damages for non-economic loss to which subsection (1) applies.

765 Aggravated damages are compensatory, not punitive, and they are awarded "precisely because other conduct by the defendant[], which may or may not take the form of another libel, rubs salt in the wounds inflicted by the libel sued upon". See *Stead* at 179 [273] (Lee J), approving *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153 at 170 (Lord Donaldson MR).

766 Aggravated damages are awarded to compensate an applicant where the respondent's conduct towards the applicant was improper, unjustifiable or lacking in bona fides and does in truth aggravate the applicant's hurt to feelings they have already suffered. See ***Triggell v Pheeney*** (1951) 82 CLR 497 at 514 (Dixon, Williams, Webb and Kitto JJ) ("the conduct of the defence may be taken into consideration not only as evidencing malice at the time of publication or afterwards, as, for instance, in filing a plea, but also as improperly aggravating the injury done to the plaintiff, if there is a lack of bona fides in the defendant's conduct or it is improper or unjustifiable"); *KSMC Holdings Pty Ltd v Bowden* (2020) 101 NSWLR 729 at 760 [150] (Payne JA, Basten and White JJA agreeing) ("Aggravated damages are awarded where the defendant's conduct towards the plaintiff was improper, unjustifiable, or lacking in bona fides … Hence, failure to apologise … conducting proceedings in a certain manner … and continuing publication … may all result in an award of aggravated damages *if* such conduct was improper, unjustifiable, or lacking in bona fides").

767 Section 36 of the Act is headed "State of mind of defendant generally not relevant to awarding damages" and provides:

> In awarding damages for defamation, the court is to disregard the malice or other state of mind of the defendant at the time of the publication of the defamatory matter to which the proceedings relate or at any other time except to the extent that the malice or other state of mind affects the harm sustained by the plaintiff.

Claim for damages for non-economic loss considered

768 Mr Pesutto accepted that Mrs Deeming is genuinely distressed and aggrieved by the events that transpired following the LWS rally, including Mr Pesutto's publication of the impugned publications (RCS [43.1]).

769 Mr Pesutto also accepted that if Mrs Deeming were successful, she would be entitled to damages for hurt, distress and embarrassment flowing from the impugned publications (RCS [43.3]–[43.2]).

770 The evidence about Mrs Deeming's hurt, distress and embarrassment flowing from the impugned publications was extensive. Her own evidence, and the corroborating evidence of her husband, friends and colleagues is that Mrs Deeming has suffered and continues to suffer substantially in each of those regards.

771 It is not necessary to rehearse all of that evidence. In her affidavit evidence, by way of example, Mrs Deeming gave the following unchallenged evidence about the combined effect of the publications (CB:1, 31–33[158]–[159], [161]–[164], [160]):

> In the days following the Publications, I felt shell shocked. I have in the past always tried not to cry in front of anyone, not even Andrew or our children, but now I cried frequently. I couldn't help it. I often stayed in my room for long periods. I would stay in bed and I had no energy. I started losing track of time almost immediately. I felt frozen. People that know me know that if I start to forget things, I'm not coping and I'm not in a good headspace. I was now confused; I couldn't remember what I had just done or what I had to do next. I would find myself standing in a room, not knowing what I was meant to be doing.
>
> I felt degraded and humiliated. The whole process was very dehumanising. I felt that nobody was seeing me as a mother with four children for whom I was responsible. I felt that Mr Pesutto and the Leadership Team did not see me as a human but rather as some sort of political unit. I was very disturbed by this. I wondered what sort of monsters they were, who didn't care about me but only about the political career of the leader of the party. They seemed not to care about justice, or the truth.
>
> …
>
> I became fearful of going out in public. I stopped wanting to go out with our children, because I was scared they might get hurt or spat on or otherwise caught in the middle of this terrible situation.
>
> I stopped eating. I would forget to drink and eat, and sometimes Andrew would have to remind me to do so. I lost weight.
>
> I felt utterly isolated and lost.
>
> I felt I had lost control of my life, and of my fate and the fate of our children.
>
> …
>
> The injustice of it all grated on me day and night, and it still does. I could not comprehend that this could happen - right out in the open in front of the whole world. I was so hurt that the Leadership Team had betrayed every principle we were supposed to protect - women, children, family, free association, free speech, due process, civil rights, even just common decency. I wondered how they could ever be trusted by ordinary people to fight for their rights when they so callously and unfairly persisted in persecuting an innocent woman and tearing strips off her in front of the whole world.

772 Mrs Deeming also gave this unchallenged evidence about the ongoing impact of the publications on her (CB:1, 56–57[276]–[278]):

> I have continued to suffer emotionally and physically as a result of the ordeal starting with and caused by Mr Pesutto's Publications. I have had to see doctors about various physical issues. For example, I have had terrible headaches (I had to have an MRI to check for any issues); I have been subconsciously clenching my jaw (for which I have had to have treatment including physiotherapy for my neck and shoulders and then dry needling in my jaw and face muscles); I have been subconsciously clenching my fists (more than once I woke with nail marks in my palms) and my toes (so that I have frequently had agonising foot spasms at the end of the day and at night); I have had disturbed sleep and am often tired; I have had irregular periods (mostly they disappeared but once I had two periods in one month which I was told by my doctors is a known catastrophic stress reaction in women).
>
> The ongoing impact on me has been nightmarish . Over time I withdrew into myself, into a state of absolute loneliness and misery. I even stopped going to Church because I hated the idea of potentially crying in public and I was upset with God and was getting emotional during sermons and because I was so exhausted from having to explain myself to everyone, everywhere I went.
>
> On the outside, I have always tried to ensure that nobody would see how broken I really am, because I find it excruciating not to have emotional privacy and am a private person. I have never been able to feel that my physical privacy is secure because of my past experiences, so emotional privacy has always been paramount to me and my very last line of defence. This whole saga - Mr Pesutto's public attacks on me, followed by attacks on me by others, and the utter humiliation of having to tell people I'm not a Nazi - were all so public that they have been traumatic to me to an extent that I cannot properly explain in writing.

773 Mr Deeming gave evidence he is worried "she will not recover" (CB:4, 131[103]); Mr Duke gave evidence that he "fear[s] it will be difficult, and perhaps impossible, for her to move on and put this behind her" (CB:6, 143[20]); Ms Hughes gave evidence that Mrs Deeming is worried that the publications "destroyed her personal and political purpose in life" (CB:14, 209[20]); Ms Thompson gave evidence that she does not think that Mrs Deeming "will ever be the way she was before" (CB:25, 287[15]); and Ms Walton gave evidence she fears the publications "have broken [Mrs Deeming] and that she will never be the same" (CB:26, 294[22]).

774 I am therefore satisfied that damages awarded must reflect the fact that Mrs Deeming has suffered real and severe hurt to her feelings.

The seriousness of the defamation

775 The imputations that I have found to be carried by each of the publications are obviously serious, and any award of damages must take into account the seriousness of all the meanings conveyed.

776 It follows that the need for vindication in this case is high and any award of damages must be "sufficient to convince a bystander of the baselessness of the charge[s]": *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1071 (Lord Hailsham LC), cited by Lee J in *Lehrmann v Network Ten Pty Ltd (Trial Judgment)* [2024] FCA 369 at [1014].

Evidence of Mrs Deeming's reputation

777 Mrs Deeming adduced a wealth of evidence, which I accept, to establish that prior to 19 March 2023, she enjoyed a good reputation.

778 There is considerable evidence of her good reputation in the objective facts, namely that Mrs Deeming:

> (1) was elected to the position of Councillor for the City of Melton in 2020, where she served from 2020 until 2022;
>
> (2) won preselection for the number one spot on the Liberal Party ticket for the Western Metropolitan Region in 2022;
>
> (3) was elected as the Liberal Party Member of the Victorian Parliament for the Western Metropolitan Region on 26 November 2022, with the second highest "below the line" preference vote of all newly elected MPs behind only Ms Heath; and
>
> (4) was asked by Mr Pesutto, as Leader of the Liberal Party, to run for Liberal Party Whip in the Legislative Council and was unanimously voted to that position in December 2022.

779 She also enjoyed a good reputation among her family and friends.

780 Her husband gave unchallenged evidence that in general, those he knew who also knew or knew of Mrs Deeming – including their family, friends, and work colleagues – regarded her as a friendly, warm and positive person. She was regarded as someone who truly cared about others and respected as holding strong principles. Over the years to 19 March 2023, he "was amazed at how many people ended up as fierce supporters of her because she was friendly and respectful" (CB:4, 119[38]).

781 Ms Hughes, who has known Mrs Deeming since their days at university and now works for her as an administrative assistant, gave unchallenged evidence that, within her social circles prior to 19 March 2023, Mrs Deeming "was well respected and had a reputation for being honest, driven, devoted to her Christian faith and dedicated to helping others". Mrs Hughes' family "admired her honesty and regarded her as a truthful person" (CB:14, 206[7]–[8]).

782 Ms Gorman, who works for Mrs Deeming as an electoral officer, and has known Mrs Deeming since early 2019, gave unchallenged evidence that, within the circles in which she mixed, Mrs Deeming had a reputation for being "knowledgeable, kind and generous" and "as someone who was very giving of her time; wanted to help others; and stood by her principles" (CB:8, 159[6]).

783 She also enjoyed a good reputation among faith communities.

784 Mr Deeming gave unchallenged evidence that, prior to 19 March 2023, Mrs Deeming's reputation amongst the church communities of Brimbank Presbyterian Church and Melton Presbyterian Church was as someone who was friendly and warm, fun and inclusive and willing to serve; that her work as the Researcher for the Church and Nation Committee of the Presbyterian Church (**CNCPC**) was highly regarded; and that he would often hear from Ministers that they loved her work and found it helpful in understanding the issues they were facing in the world of politics and that they would tell him they would often share her work with their congregations (CB:4, 119[39]).

785 Mr Duke, who is a Senior Minister of the Presbyterian Church and a member of the CNCPC, gave unchallenged evidence that, within the Presbyterian community within which he mixed, Mrs Deeming had a reputation as "someone who had a good heart and a deep desire to help others and protect them from harm, especially children" (CB:6, 140[5]). Throughout her campaign for election to the Legislative Council, and afterwards, there "was broad support within the members of the Presbyterian Church community" for her and she "was seen as a cornerstone of the Presbyterian community and … as a person who embodied its values" (CB:6, 140[5]–[7]).

786 Mr Duke also deposed that Mrs Deeming "was respected across other faith communities, particularly within the Islamic and Hindu communities in Western Melbourne" (CB:6, 141[8]). He gave evidence that, during her campaign for election, Mrs Deeming was invited to speak at a mosque in Western Melbourne, which was an "honour". She was also "regularly invited to and attended religious gatherings across Western Melbourne".

787 Ms Hughes gave unchallenged evidence that, within the faith community, Mrs Deeming "was described as being a very 'Godly person', meaning she is devoted to her faith and displays the teachings of the Bible in her everyday life" (CB:14, 206[8]).

788 Mr Smith, who resigned from Parliament in July 2023, gave unchallenged evidence that Mrs Deeming was liked and respected by people within various Islamic communities throughout Victoria (CB:23, 268[11]). He deposed that she was invited to speak in the men's area of a mosque, which "was a big deal" because in his experience most mosques separate men and women and would not allow a woman to speak in person to the men in the men's area, such that this indicated to him "the level of respect that this particular community had for [Mrs Deeming]".

789 Ms Walton met Mrs Deeming through the Brimbank Presbyterian Church in Taylors Lakes in about 2009. She gave unchallenged evidence that Mrs Deeming was loved and highly respected within the Brimbank Church community prior to 19 March 2023 (CB:26, 291[5]–[8]). She was known as a person who sincerely embraced the well-accepted creed within the Presbyterian Church that no one is perfect but God and as someone who "refrained from judging others for their imperfections" and "was very forgiving and always showed people grace" (CB:26, 291[5]). She was also "someone that everybody at church wanted to know and be around" (CB:26, 291[7]) and they "looked up to her and often asked her for advice on difficult life decisions", and they "always valued [her] opinion" (CB:26, 291[8]).

790 A number of witnesses agreed, however, in cross-examination that Mrs Deeming's good reputation in faith communities remains largely undiminished. See T369.16–34 (Mr Duke); T470.12–20 (Ms Walton); and T1071.23–28 (Ms Wong).

791 There was also a lot of unchallenged evidence adduced about Mrs Deeming's good reputation in the Liberal Party, including from her husband, Ms Gorman, Ms Heath, Ms Hughes, Mr Riordan, Mr Ruddick, Mr Smith and Ms Thompson.

792 Mr Mundine gave this unchallenged evidence about Mrs Deeming (CB:17):

> 1 I am the Executive Chairman at Nyungga Black Group Pty Ltd.
>
> 2 I have been involved in Australian politics since the 1990s.
>
> 3 In 1995 I was the first Aboriginal councillor to serve on the City of Dubbo Council.
>
> 4 I joined the Australian Labor Party (**ALP**) in 1995 and in 1999 stood as the NSW Labor candidate for the seat of Dubbo.
>
> 5 In 2005, I was awarded the Bennelong Medal for service to the Aboriginal community.
>
> 6 Between 2006 and 2007 I served as President of the ALP. I was the first Indigenous Australian to serve as president of an Australian political party.
>
> 7 In 2013, then Prime Minister Tony Abbott appointed me as Chairman of the Australian Government's Indigenous Advisory Council.
>
> 8 In 2016 I was awarded an Officer of the Order of Australia for distinguished service as a leader in Indigenous affairs and advocate for enhancing economic and social public policy outcomes for Aboriginal and Torres Straits Islander people.
>
> 9 Between 2017 and 2019, I was the Chairman of the Australian Government's Indigenous Advisory Council for the Liberal Party.
>
> 10 In January 2019, I joined the Liberal Party of Australia and am still a member.
>
> …
>
> **Meeting Moira**
>
> 12 Moira and her husband Andrew have been my close personal friends since I met them in 2019 during a Spectator Magazine lunch. We became friends and I was drawn to Moira and her family because they were lovely and heavily involved in their local community, particularly their local church and the wider Western Melbourne community.
>
> 13 As I am based in Sydney and Moira is based in Melbourne, we regularly keep in touch via telephone. If Moira and/or her family visit Sydney, they will often stay with us, and likewise my family and I will often stay with Moira and her family when we visit Melbourne. When I only visit Melbourne for a short time, the two of us will frequently arrange to have coffee or lunch. We socialise regularly and attend social events together. For example, we often go to the football together. We would often attend political functions together, such as Liberal Party events.
>
> **Moira's Reputation (Prior to 19 March 2023)**
>
> 14 Before 19 March 2023, amongst the social and political circles in which I mix, Moira was regarded as a lovely, outgoing person who is easy to talk to.
>
> 15 I have connections with various political figures particularly within the Liberal Party. Within these circles, prior to 19 March 2023, Moira was highly regarded. She was known within these circles for being very driven, intelligent and well-spoken. People within these circles would tell me they found her approachable and that she was kind and lovely to talk to. She was known within these circles for having a very common-sense approach to her work, particularly as a councillor for Melton. Those who had a professional relationship with her would say she was good to work with and that she was a model leader. For this reason, I was not surprised to learn that, upon her election to the Victorian Legislative Council in November 2022, she was given a leadership role as the upper house whip. In my experience, working across various sectors in government, the upper house whip is a very powerful position which carries authority within the party. In my experience, one is not appointed whip unless the party (and the party leader) think highly of the candidate in relation to their integrity and trustworthiness.
>
> 16 Within my social and political circles, Moira was also known to be an exceptional event organiser and would regularly be

> 16 Within my social and political circles, Moira was also known to be an exceptional event organiser and would regularly be entrusted to organise rallies and events for the Liberal Party, particularly in Western Melbourne.
>
> 17 Amongst the members of the broader Liberal Party who I knew and who knew Moira, she was well respected and was perceived to be a potential leader within the Party and someone who could be a major contributor to the Liberal/National Coalition's campaign to win government at the next state election. Liberal Party members would frequently tell me that they regarded Moira as an incredible person who was able to unite and rally people from across religious and ethnic groups, particularly in her seat in Western Melbourne.
>
> 18 I observed that Moira was well respected and loved by the wider community in Western Melbourne. She was perceived as a very capable electoral member who had great potential to positively impact the communities in Western Melbourne as an elected MP. As part of Moira's election campaign to the Legislative Council in 2022, she was invited to speak at a Mosque in Western Melbourne. I attended this event with her. I recall observing that she was received very positively, and about 20 volunteers offered to assist in her election campaign as a result.
>
> 19 During her campaign for election, I met with many of her campaigners and constituents, all of whom spoke highly of her to me. They told me they believed she was a woman who cared for and was going to fight for the people in Western Melbourne and wanted to represent the local communities. I observed that Moira had a very good rapport with the constituents in her electorate and was well known because of her work in the community as a local government councillor in Melton. I saw that Moira had a strong relationship with the multicultural communities in Western Melbourne, who perceived her as a hard worker for the community. They believed that she wanted to speak for them in Parliament. They would say that she was always giving herself out to help the local community.
>
> 20 I recall meeting Mr Pesutto at a post-election celebration in Western Melbourne following the 2022 state election. There had been a huge swing in favour of the Liberal/National Coalition in this region, and one of the only swings the Liberal Party had at this election. He approached me to discuss the campaign and sought my support for the next election. During this conversation, he spoke very highly of Moira and said that it was great to have her in Parliament. He said that he was impressed with the number of volunteers and support Moira had received throughout her campaign.

793 Ms Clark, Ms Wong and Ms Gorman also gave unchallenged evidence to the effect that she enjoys a good reputation with some people on the other side of politics. Ms Gorman, for example, deposed as follows (CB:8, 159[7]):

> Before 19 March 2023, in the circles that I mixed, I noted that, even amongst people who belonged to different political backgrounds who were in deep disagreement on numerous issues, all held her in high esteem. They, like myself, were drawn to her skills as a public speaker; they saw her as a talented and captivating speaker. They would remark to me immediately or shortly after seeing her speak at conferences and political fundraisers or events that she was articulate, charismatic and clearly supported her arguments with extensive research.

794 And there was also unchallenged evidence abouts Mrs Deeming's reputation for seeking to stand up for and protect women and children, from Ms Dennis, Ms Hughes and Ms Wong.

795 Ms Wong, the CEO of WFA, deposed as follows (CB:29, 318[13]):

> Before 19 March 2023, Moira's reputation in my professional circles, and among WFA supporters, was that she was courageous and a person of great integrity who stood up for what she thought was right. My professional circles include women who identify themselves as feminists and are from the left wing of politics. To me, the most striking aspect of this was that Moira was clearly respected by people from opposite sides of the political spectrum, which in my experience is very rare. I observed that Moira was able to work with people who had different political beliefs from herself; she could put politics to the side in order to engage in reasonable and meaningful debates about these issues. Within my professional circles, before 19 March 2023, Moira was greatly respected for this attribute.

Damage to Mrs Deeming's reputation

796 Mrs Deeming's husband, and Ms Hughes, Ms Gorman and Ms Walton gave unchallenged evidence as to the adverse effect of the publications on Mrs Deeming's reputation.

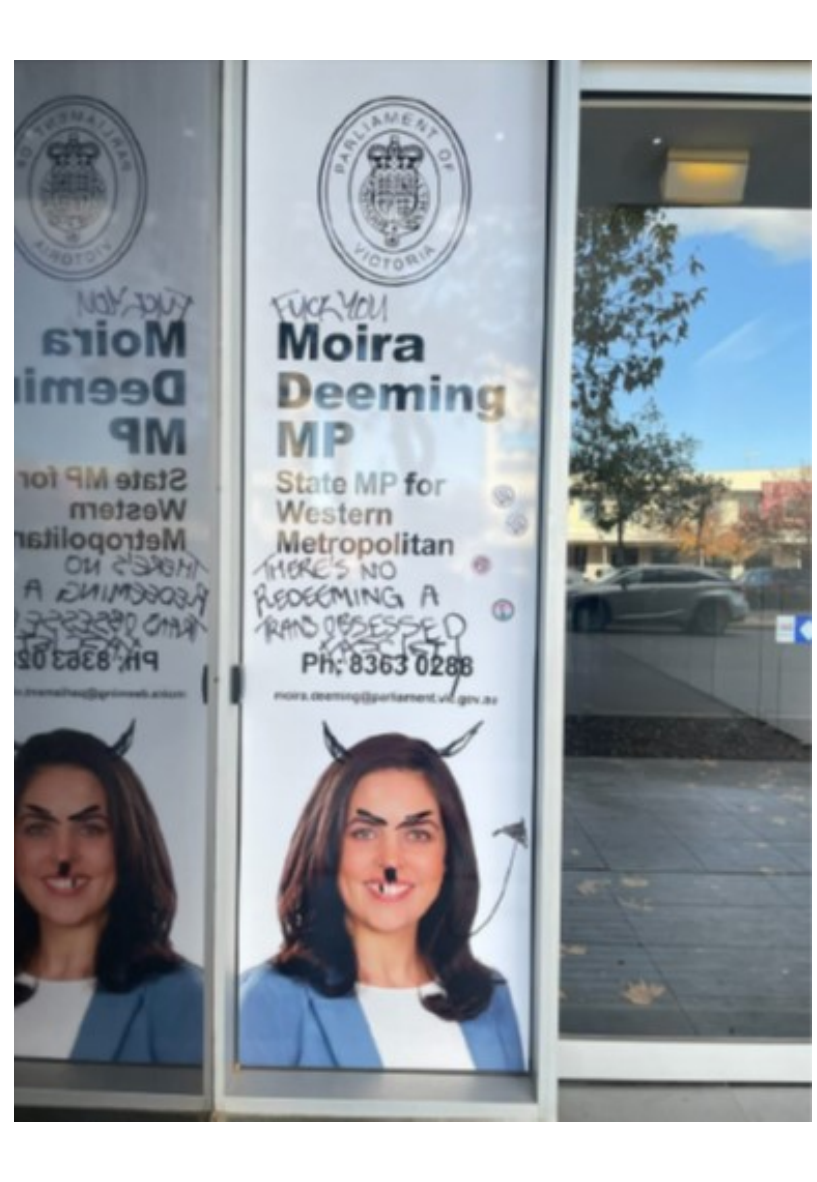
797 Mr Deeming gave this evidence in his affidavit (CB:4, 122[56]):

> Over the next few days, I began receiving phone calls about the situation from people we knew. I had to reassure them that of course Moira did not 'attend a rally with Nazis'. I remember one call in particular from a close friend and a previously very strong supporter of Moira who had heard the stories and needed me to reassure them. One ridiculous sentence which stood out was 'Why was she wearing the same colours as the Nazis?'. It seemed to me that the persons I spoke to believed Mr Pesutto and even after my reassurances they did not seem fully convinced.

798 Ms Hughes, Ms Gorman and Ms Walton gave evidence that they too had similar conversations with people they knew.

799 Mrs Deeming also gave evidence of having been shunned by people as a result of the publications. She said that following the publications she felt "isolated" and as though she were "radioactive" (CB:1, 33[166]). She said that colleagues stopped talking to her and sometimes would cross to the other side of the hallway (CB:1, 33[166]–[167]). As she put it, "[t]his was not just Liberal members. People I previously would say hello to or interact with in Parliament, now would avoid making eye contact with me and look the other way; they would ignore me and cross to the other side of the hall. It seemed everyone had turned against me".

800 She also gave this unchallenged evidence that on about 17 May 2023 (which was International Day Against Homophobia, Biphobia and Transphobia), someone defaced her photo on her office window. She exhibited this photograph taken by one of her staffers at around that time:



801 Unsurprisingly, Mrs Deeming said that "[t]his was humiliating but also made me feel extremely unsafe. It occurred to me that whoever did this could watch me go in and out of the office; they could see me go to my car and follow me home. I became worried about my safety and the safety of my staff" (CB:1, 52[252]). She also deposed as follows (CB:1, 52[253]–[254]):

> In October 2023, I attended a meeting in Scotland with two Scottish MPs: Pam Gosal, (MSP for West Scotland (Region)) and Rachael Hamilton (MSP for Ettrick, Roxburgh and Berwickshire Pam). We took photographs together but they said they didn't want them published until my name and reputation were cleared of association with Nazism. This was a humiliating and upsetting experience for me.
>
> In November 2023, I was scheduled to speak at a community forum with a Local Government Councillor, Council Watch and local residents at a local Church Hall in Werribee. The Church was inundated with threats and complaints about my supposed Nazism and so the venue pulled out and the event had to be moved outdoors to a park.

802 Mrs Deeming also deposed that since the publications, she has for the first time been branded as an "extremist", including in a 21 March 2023 article in *The Age*, and that she continues to be linked with Nazism.

803 Mr Deeming gave unchallenged evidence that a number of people cut off contact with Mrs Deeming after the publications, including former friends and members of the Liberal Party, and that people have "unfollowed" her on Facebook (CB:4, 128[88]).

804 There was also extensive unchallenged evidence from witnesses of Mrs Deeming's distress at being shunned in various ways by members of her own party, including people she had known for a long time.

805 Witnesses also gave unchallenged evidence of the likely impact of the publications on Mrs Deeming's reputation. As Mr Riordan put it:

> In my view, an allegation of being a Nazi or Nazi sympathiser is one of the most serious allegations that can be made about a person, and is like an allegation of being a murderer or paedophile or rapist. I think everyone I know, in my personal and political circles, would share that opinion. Those sorts of allegations never leave a person. Nobody wants anything to do with such a person. This was a cruel thing to be inflicted on [Mrs Deeming].

806 Mrs Deeming gave evidence about "the wave of abuse and hatred" that ensued following the publications, which is set out above under the rubric of serious harm at [590]ff above.

807 Mr Mundine also gave unchallenged evidence about responses he had received to his tweets. See above at [597]ff. Prior to Mr Pesutto's statements about Mrs Deeming on 19 and 20 March 2023, Mr Mundine said that he could not recall ever hearing any suggestion that she was associated with Nazis, or anything similar, and that he had never observed any of the negative sentiments towards her which he described in the tweets he received.

808 Ms Papadimitriou, Mr Riordan, Mr Ruddick, Ms Thompson, Ms Walton and Ms Wong also gave evidence along the same lines – that is, that their online messaging of support for Mrs Deeming was met with responses very similar to those Mr Mundine received.

Extent of publication

809 Mr Pesutto conceded the following extent of publication:

(a) the media release: up to 821 persons, the majority of whom were journalists;

(b) the 3AW interview: approximately 143,000 to 159,205 persons (of whom up to 205 were downloads from the website, with the remainder through the radio);

(c) the ABC interview: up to (but likely substantially less than) 227,648 persons through live television broadcast (likely substantially less, as many viewers of the combined episode may have watched another part of the broadcast); up to (but likely substantially less than) 12,621 persons on *ABC iView* (for the same reason); approximately 20,942 through the ABC interview on radio; less than 364 persons via download from the ABC website; a smaller percentage of 134,954 page views;

(d) the press conference: no extent of publication was admitted but the Court may infer that various journalists were present and comprehended what was said; and

(e) EMD: by email to 28 members of the party at 6.01pm on 20 March 2023 following publication of an article on *The Age* website and media enquiries, Mr Pesutto's office provided a copy of the EMD to various media outlets including the *Herald Sun* and *The Australian*, through 15 different journalists.

810 Mrs Deeming contended, by reference to evidence summarised in a 13-page annexure to the written closing submissions, that the "absolute minimum number of views" of the impugned publications was:

(a) the media release: 739,316.

(b) the 3AW interview: 151,205.

(c) the ABC interview: 516,589.

(d) the press conference: 322,525.

(e) The EMD: 115,987.

811 Little is to be gained by a minute analysis of the different numbers posited. The parties were, as the competing figures show, largely ad idem on the extent of publication of the 3AW and ABC interviews. But on any view of it, publication of each of the impugned publications was extensive and this is to be considered in assessing damages.

Extent of republication

812 Counsel for Mrs Deeming relied on an annexure to their written submissions about the extent of publication of the impugned publications (being ACS Annexure B). Republication was relied on solely to "swell the damages". (That is an expression in torts cases that dates back to the mid-19th century. See *Prince Albert v Strange* (1849) 2 De G & Sm 652; 64 ER 293.)

813 Mr Pesutto's corresponding annexure was a 23-page, multi-coloured schedule entitled "Schedule B – Table of alleged republications" (being RCS Schedule B). It purported to go line by line through each of the republications relied on by Mrs Deeming with a view to showing whether and to what extent the republications republished "the sense and substance" of the impugned publications.

814 The legend to the schedule said that items coloured in green were "[r]epublication of sense and substance admitted and not refuted for alleged republication that was pleaded"; items coloured faded green were "[r]epublication of sense and substance admitted and not refuted for alleged republication that was not pleaded"; items coloured orange were "[r]epublication of sense and substance only arguable and/or arguably refuted"; and items coloured red were "[r]epublication disputed".

815 The pleaded case about "republication" of the media release, the 3AW and ABC interviews, the press conference and the EMD, as Ms Chrysanthou made clear in her closing address in reply, was intended only to invoke the "grapevine effect" in the assessment of damages. See T1646.24–T1647.2).

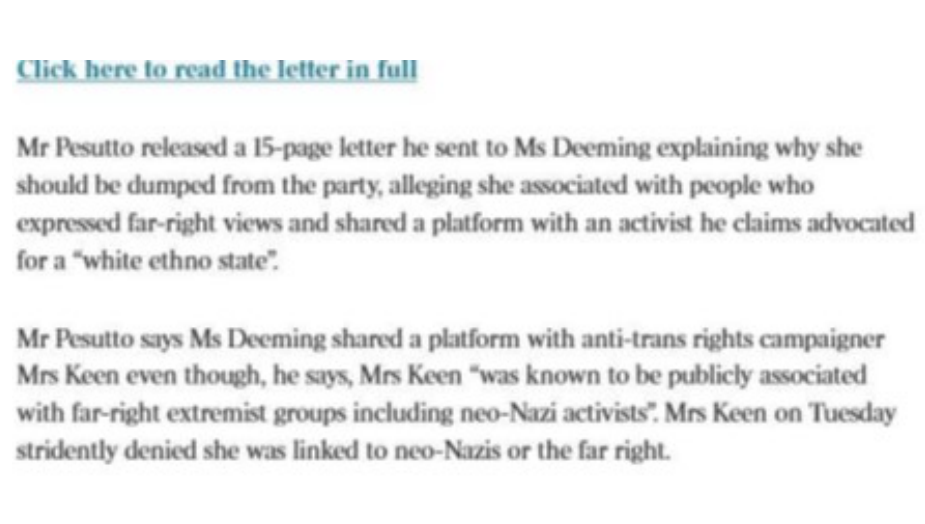
816 As Gummow J said in *Palmer Bruyn & Parker Pty Ltd v Parsons* (2001) 208 CLR 388 at 416 [88], "the expression 'grapevine effect' has been used as a metaphor to help explain the basis on which general damages may be recovered in defamation actions; the idea sought to be conveyed by the metaphor was expressed by Lord Atkin in *Ley v Hamilton* (1935) 153 LT 384 at 386 as follows:

> 'It is precisely because the "real" damage cannot be ascertained and established that the damages are at large. It is impossible to track the scandal, to know what quarters the poison may reach: it is impossible to weigh at all closely the compensation which will recompense a man or a woman for the insult offered or the pain of a false accusation.'"

817 As Steyn J noted in *Riley* at 217 [103] the "grapevine effect" has been immeasurably enhanced by social media and modern methods of electronic communication.

818 But in any event, Mr Pesutto's Schedule B concedes that it is "arguable" that many of the identified republications do repeat the sense and substance of the relevant impugned publication and in the case of others, his only complaint was that the identified republication had not been specifically mentioned in Mrs Deeming's pleading.

819 Parts of RCS Schedule B are exasperatingly obdurate. For example, it asserted that an article in *The Australian* entitled "Victorian Liberal Leader John Pesutto's bid to expel anti-trans MP Moira Deeming splits Libs" dated 22 March 2023 "purports to contain a link to the [EMD]" and that it is thus only "arguable" that it repeated the EMD. This is an image of the relevant part of the article:



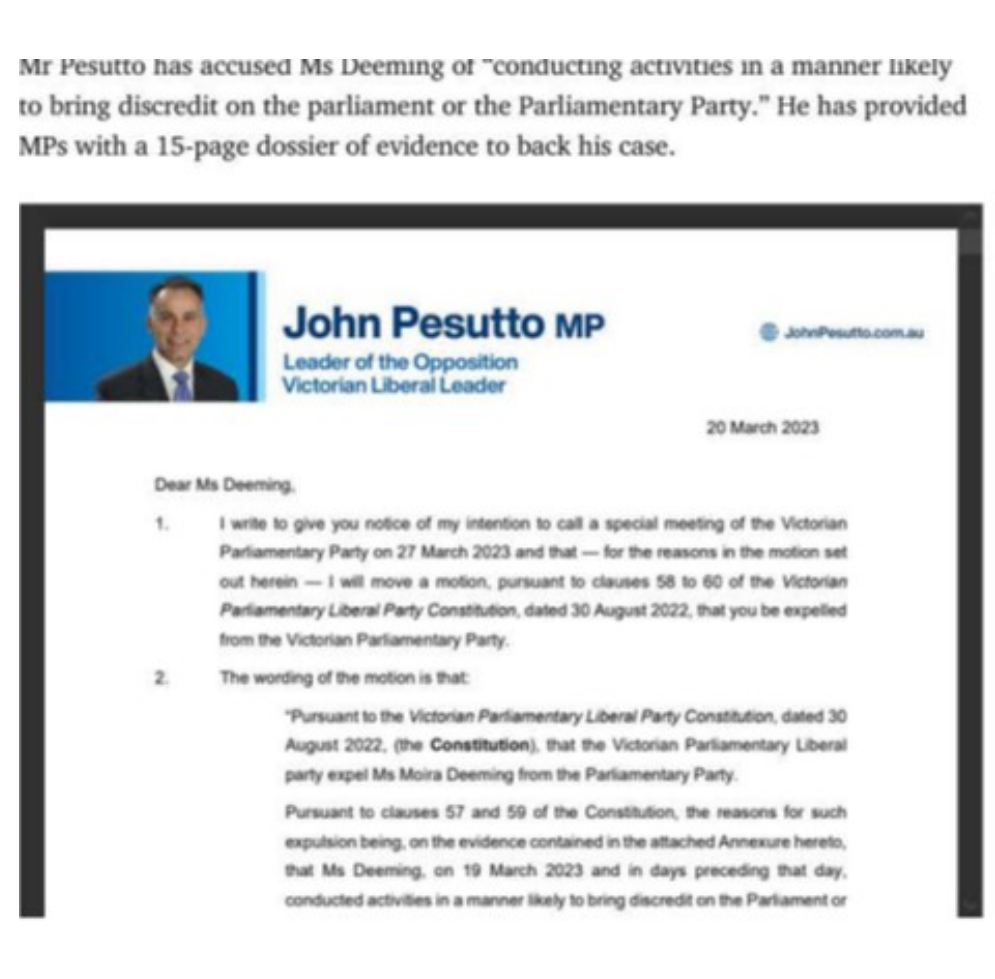
Click here to read the letter in full

Mr Pesutto released a 15-page letter he sent to Ms Deeming explaining why she should be dumped from the party, alleging she associated with people who expressed far-right views and shared a platform with an activist he claims advocated for a "white ethno state".

Mr Pesutto says Ms Deeming shared a platform with anti-trans rights campaigner Mrs Keen even though, he says, Mrs Keen "was known to be publicly associated with far-right extremist groups including neo-Nazi activists". Mrs Keen on Tuesday stridently denied she was linked to neo-Nazis or the far right.

820 The notion that the reader would not have been able to "click here" to read the entire original EMD is improbable in the extreme and the submission should not have been put.

821 RCS Schedule B also asserts that there was no republication of the whole of the EMD in a 21 March 2023 article in the *Herald Sun* entitled "Libs vote as John Pesutto releases dossier on Liberal MP Moira Deeming following anti-trans rally". This is an image of the relevant part of the article:



Mr Pesutto has accused Ms Deeming of "conducting activities in a manner likely to bring discredit on the parliament or the Parliamentary Party." He has provided MPs with a 15-page dossier of evidence to back his case.

John Pesutto MP
Leader of the Opposition
Victorian Liberal Leader

JohnPesutto.com.au

20 March 2023

Dear Ms Deeming,

1. I write to give you notice of my intention to call a special meeting of the Victorian Parliamentary Party on 27 March 2023 and that — for the reasons in the motion set out herein — I will move a motion, pursuant to clauses 58 to 60 of the *Victorian Parliamentary Liberal Party Constitution*, dated 30 August 2022, that you be expelled from the Victorian Parliamentary Party.
2. The wording of the motion is that:

> "Pursuant to the *Victorian Parliamentary Liberal Party Constitution*, dated 30 August 2022, (the **Constitution**), that the Victorian Parliamentary Liberal party expel Ms Moira Deeming from the Parliamentary Party.
>
> Pursuant to clauses 57 and 59 of the Constitution, the reasons for such expulsion being, on the evidence contained in the attached Annexure hereto, that Ms Deeming, on 19 March 2023 and in days preceding that day, conducted activities in a manner likely to bring discredit on the Parliament or

822 It is asserted that that part of the article does not contain the sense and substance of the EMD because it "[c]ontains a picture of part of the first page of the [EMD]". But the exhibit referred to is a screenshot – and the much more likely inference to draw is that the live version of the article embedded the full EMD by clicking on the image depicted above. And it should never have been contended otherwise.

823 RCS Schedule B also asserted that a 20 March 2023 article in *The Age* entitled "'Total Aryan victory': Nazis the only one happy after parliament protest", republished under three other mastheads, which quotes Mr Pesutto saying in terms that Mrs Deeming "associates with Nazis", "arguably" conveys the sense and substance of the 3AW interview. But it self-evidently **does** convey and repeat the essence of the defamatory imputation alleged and found.

824 The fact of the matter is that there was significant republication of the sense and substance of the relevant impugned publications.

Mitigation

825 Mr Pesutto made a submission (at RCS [45.1]) that any award of damages should be mitigated by reference to certain matters, including:

(a) "the substantial truth of various imputations and the particulars set out in Annexure A of his Defence, already discussed in the Contextual Truth section [of the RCS]";

(b) his "repeated public statements that he did not believe Mrs Deeming to be a neo-Nazi, a white supremacist, or anything of similar substance or effect";

(c) "the fact that Mrs Deeming made, caused or acceded to public statements falsely asserting that Mr Pesutto has said that she is a Nazi or has Nazi associations or is a Nazi sympathiser, thereby causing or contributing to the damage to her reputation…";

(d) Mrs Deeming's "prior damaged reputation"; and

(e) "such other evidence as is properly admitted at trial".

826 As is apparent from my reasons, I do not accept the propositions that underpin them. I do not accept Mr Pesutto's pleaded imputations (other than in the case of the EMD where they were similar to Mrs Deeming's) were carried. It is true that Mrs Deeming was wrong to say that Mr Pesutto had said that she was a "Nazi", but I have found that he did say, for example, that she associates with Nazis and it is difficult to see what additional damage Mrs Deeming could have done to her own reputation in that regard. And she did not have a relevant "prior damaged reputation", as I have explained.

827 As to (e), nothing of significance in the light of my earlier conclusions was identified.

Quantum of damages for non-economic loss

828 Mr Pesutto accepted that any republications of the defamatory sense and substance of a publication (unlike the position with respect to serious harm) are matters I can properly have regard to when considering what damages to award (RCS [44.2(b)]).

829 It was also submitted, and I took Mrs Deeming to agree, that I should make a single award for damages, aggregating the harm caused by the separate publications.

830 Weighing up all matters that I have considered above and bearing in mind consolation for such hurt that has been causally related and has been proven, reparation for the harm done to Mrs Deeming's reputation and the need for vindication of it, and doing my best to ensure that there is an appropriate and rational relationship between the harm sustained by Mrs Deeming and the amount of damages awarded, I have concluded that the appropriate award of damages for non-economic loss is $300,000.

831 An order for interest will also be made.

Claim for aggravated damages considered

832 In *Russell (No 3)* at 454 [460], Lee J lamented that "[o]ne is often left with the impression that defamation practitioners perceive a world awash with aggravating factors". In this case, Mrs Deeming's statement of claim lists 27 separate particulars of aggravation, including a promise of "further particulars" to be "provide[d] … in the course of these proceedings".

833 In counsel's closing submissions, the particulars were narrowed (ACS [1116]ff) and the case for aggravated damages was put on the basis that Mr Pesutto's conduct from 19 March 2023 until Mrs Deeming's ultimate expulsion on 12 May 2023 "was dishonest, malicious, and unethical".

834 In her closing address, Ms Chrysanthou, in furtherance of that submission (among others), contended that Mrs Deeming's "case theory" was that "after what occurred on 23 February, when he was asked questions about Mrs Deeming's maiden speech, [Mr Pesutto] uses this Nazi appearance on the steps of Parliament as a pretext to just get rid of her" and that "Mrs Deeming was expelled because Mr Pesutto found it annoying to have to answer press questions about her whenever she made a statement about sex-based rights". It is fair to say that the case was not run on that basis and it was too late to advance such a case theory in closing, as Dr Collins rightly submitted.

835 Ultimately, the 27 particulars of the claim for aggravated damages were limited to the following.

836 First, it was alleged that "Mr Pesutto made a decision to remove Mrs Deeming … prior to the 19 March Meeting"; and that "[h]e did so because he disagreed with Mrs Deeming's views about sex-based rights and safeguards and saw these views as a threat to his own vision of the Liberal Party" and used her attendance at the LWS rally "as a pretext for seeking to expel her".

837 Secondly, Mr Pesutto "attended the 19 March Meeting thinking there were only two possible outcomes – Mrs Deeming would resign, or, if she refused to resign, she would be expelled" and only "pretended to give thought to a potential third outcome –a statement from Mrs Deeming".

838 Thirdly, Mr Pesutto made the decision to expel Mrs Deeming without warning to her, and his publication of the media release and the release of the EMD to the press was intended to destroy her reputation and undermine her position ahead of the vote on the expulsion motion (ACS [1118], [1121]).

839 Fourthly, "Mr Pesutto's repeated use of the word 'associated' and 'associations' … was deliberately vague and slippery" and "[h]e knew people would understand [the words] in different ways, and that some would think from it that he was suggesting Mrs Deeming was a Nazi or Nazi sympathiser, or that she knowingly partnered with and supported Nazis and Nazi sympathisers".

840 Fifthly, Mr Pesutto did not include in any of the impugned publications "any reference to what Mrs Deeming had [said] … in the 19 March Meeting, or any of the other exculpatory material he had seen … because it contradicted his narrative and revealed his position to be untenable".

841 Sixthly, Mr Pesutto reneged on his promise made at the 27 March meeting to make a joint statement.

842 Seventhly, Mr Pesutto "[i]n an attempt to conceal his dishonesty … prepared his own self-serving version of the minutes of the 21 March Meeting and 27 March Meeting".

843 Eighthly, "[w]hen Mrs Deeming … complained about his conduct, and threatened as a last resort to exercise her legal rights", Mr Pesutto "conspired to seek for a second time to expel Mrs Deeming" and "persuaded others to sign" the new expulsion motion "and then concealed his own involvement".

844 Finally, it was submitted that "Mr Pesutto's conduct of the litigation has been far from ideal", including because he dishonestly failed to disclose the existence of the recordings of the 19 March meeting.

845 I have had regard only to the particulars relied upon in closing about the matter.

846 A number of those particulars are relied in furtherance of the "pretext" case theory described above. And as I have said, that was not a case advanced at the hearing and no substantive cross-examination was directed to Mr Pesutto along those lines.

847 And all of the particulars were founded on the proposition that Mr Pesutto acted dishonestly, including by giving dishonest evidence in the proceeding. For the reasons I have set out above, although much of the evidence he gave was unresponsive, and some of it – especially his efforts to make a case that the person he nominated to be party Whip "succoured" hateful views and the like – was untrue, I do not accept that Mr Pesutto was dishonest in any of the ways pressed in closing address. And although his answers about why he did not ask Mr Southwick for a copy of the recordings of the 19 March meeting, and why he did not mention the recordings in his list of discovery, were open to debate, I do not think for the reasons given earlier that the evidence he gave about those matters was dishonest.

848 For those reasons, I decline to make an award of aggravated damages.

DISPOSITION

849 The only order that I will make upon the publication of these reasons is to adjourn the matter to a date to be fixed, hopefully in the next few days, for the purpose of the parties bringing in orders to give effect to these reasons and to deal with any argument as to the grant of any injunctive relief, and as to the calculation of interest and costs.

I certify that the preceding eight hundred and forty-nine (849) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice O'Callaghan.

Associate:

Dated: 12 December 2024

ANNEXURE A (TRANSCRIPT OF THE 3AW INTERVIEW)

Transcript of the 3AW Interview

START: **[00:00]**

N Mitchell: Now as I said, that vote later today for Liberals to expel Moira Deeming from the parliamentary party – she's only been there five minutes – I'll talk to the leader John Pesutto in a moment. There are a lot of things that complicate this. I'd argue Moira Deeming was entitled to be there, though I certainly wouldn't have gone, but did she leave when the Nazis turned up? The political optics are bad: a Liberal MP at a hate rally with Nazis, if it's a hate rally. That's not entirely fair, I'm not defending Moira Deeming, she stands for a lot of things I don't like. I think she's a **[00:30]** loose cannon for the Libs but they're going to throw her out. Opposition leader John Pesutto, good morning.

J Pesutto: Good morning, Neil.

N Mitchell: What did Moira Deeming do wrong?

J Pesutto: She's had associations, Neil, with organisers of Saturday's protest who have known links with Nazis, Nazi sympathisers, far right extremists, white supremacists and can I just make a couple of things very clear – at the outset because it's very –

N Mitchell: – Just before you do, just before you do, who are you referring to there? Are you referring –

J Pesutto: – Kellie, uh, uh, uh **[01:00]** Kellie-Jay Keen.

N Mitchell: And she's had associations with, she's got associations with Nazis? Who?

J Pesutto: Well, well people – okay, so um Jean-François Gariépy. She's done videos with Richard Spencer, Mark Collett, Klu [*sic*] Klux Klan leader David Duke. There's a long rap sheet – of

N Mitchell: – Were they videos or interviews?

J Pesutto: Videos, interviews, she's shared platforms with – this person, can I offer you a different perspective on this person, Neil. This person is not somebody who comes to this with a clean skin, she has known associations with **[01:30]** uh, I really just want to be able to set a few things straight, Neil.

N Mitchell: But she does say, she does say she'll be interviewed – she's willing to be interviewed by anybody.

J Pesutto: Uh no, that, that's not right.

N Mitchell: Okay.

J Pesutto: Her history of activism actually has taken her into league with people, with views I cannot accept –

N Mitchell: – Okay –

J Pesutto: – as consistent with Victorian values. Can I just say a couple of things at the top, Neil?

N Mitchell: Yep.

J Pesutto: First of all, this is not about free speech I am perfectly comfortable with people debating issues **[02:00]** they feel passionately about, even Moira. Absolutely people can have that. I've always said debate must be reasonable, respectful, inclusive, you can do that even in a robust setting. The problem here is that Moira just didn't turn up to this rally, she had helped organise and promote it with people who had known associations. It's not about free speech, it's about people whose values are not consistent with mine –

N Mitchell: – Okay –

J Pesutto: – not consistent with the Liberal Party or Victoria's values in my view.

N Mitchell: Well did you tell her not to go?

[02:30]

J Pesutto: Uh no, but I don't expect any member of the Liberal team to be associating with people who have long rap sheets of association with these people –

N Mitchell: – But why didn't you tell her not to go? Why didn't you say this is wrong, don't do it?

J Pesutto: Well, Neil, I don't have a problem with people airing their views and the neo-Nazis who turned up to the rally had made it clear that they were there to support this, as we later found out. And we later found out that one of the organisers, Angie Jones, who did a video with Moira and **[03:00]** two other people including Kellie-Jay Keen later on, on Saturday, actually posted this Neil, and I quote the tweet: "*Nazis and women want to get rid of pedo filth, why don't you?*"

N Mitchell: Oh, that's garbage. That's garbage.

J Pesutto: Now Neil, is that acceptable in 2023?

N Mitchell: No, of course not.

J Pesutto: Is that acceptable?

N Mitchell: Of course not.

J Pesutto: And that's what it's about –

N Mitchell: – But I get back to the point, why didn't you avoid all this and just tell her not to be part of it?

J Pesutto: Well Neil, I have that expectation of all members – but –

N Mitchell: – But did you know she was – she even raised it in the **[03:30]** Parliament last week.

J Pesutto: I – yeah, I'm aware of these values that she's had and as I've said – although I don't share those values –

N Mitchell: – Yeah, but did – were you aware that she was – were you aware that she was promoting this rally in the Parliament and on Twitter and intending to go? Were you aware of it?

J Pesutto: I was aware that she's active in this space, right? I don't –

N Mitchell: Were you aware she was going to this rally and promoting this rally?

J Pesutto: Well, I wasn't aware that she was going to be going to a rally at which Nazi activists would turn up, at which videos would be posted and –

N Mitchell: – No, no, but that's not her fault. That's not –

J Pesutto: – Well, well she's **[04:00]** associated with it and as you say, when the neo-Nazis turned, up did she leave?

N Mitchell: Well, actually you could ask Matthew Guy the same thing about certain dinners he's been to. But it's a fair point she should have left.

J Pesutto: Well, those are different. So –

N Mitchell: Did she?

J Pesutto: – So, I just want to emphasise this –

N Mitchell: – Did she?

J Pesutto: Sorry?

N Mitchell: Did she leave?

J Pesutto: I don't understand her to have left. I don't believe she left.

N Mitchell: She didn't. Okay. Okay, but I won't leave this point about she, five or six days ago, was telling the world she was going, she was promoting the rally. Why didn't you sit her down and say this is wrong, don't do it or else? Did you know? Did you know she was promoting it and raised it in Parliament?

[04:30]

J Pesutto: Neil, I know she's passionate about these issues.

N Mitchell: No, but did you know she raised it in Parliament?

J Pesutto: I didn't know she had raised the rally in Parliament, no.

N Mitchell: Were you aware she was tweeting urging people to go?

J Pesutto: No, I didn't see her tweet.

N Mitchell: Well, you know, you could have avoided it all if you knew that.

J Pesutto: Well, but – but, nevertheless Neil, we're left with a situation where you have a member of the Liberal team associating with people with these associations. Known public associations with these – and I just can't – I can't let it stand. **[05:00]** I'm a party – I'm leader of a party that wants to govern for all Victorians and the values that I'm espousing as Liberal leader are not consistent with those Nazi activists. I know Moira's not a Nazi, but my point is that she's associating with people who are. And that brings them into a place where it's unacceptable for me as a leader and I believe unacceptable for the party.

N Mitchell: Well, a member of the Greens who was Jewish went ahead and didn't have any problems.

J Pesutto: Well that, that's a matter for them. I think in terms of the overall issues about what Nazism means **[05:30]** and what white supremacy means, it is odious. And I'm about what Nazism means [05:30] and what white supremacy means, it is odious. And I'm not prepared as leader of the party to abide by any of it.

N Mitchell: Alright, so you're saying – I'm sorry

J Pesutto: We want to govern in four years.

N Mitchell: So, you're saying Kellie-Jay Keen is a sympathiser of Nazis, correct?

J Pesutto: Yes.

N Mitchell: And others are there as well?

J Pesutto: Well certainly her, Angie Jones with whom Moira posted on social media about, after the rally on Friday, posted what I said before, I won't repeat it. So, it's not as **[06:00]** if any of this is in doubt it's on the public record. They're not Moira's posts, granted, but we've got a Liberal member having done that and I just don't think that's acceptable.

N Mitchell: Did she object to what you told her?

J Pesutto: Oh, look I won't go into the details of the discussion. You can imagine how someone would react to the news that I'm going to bring this application but I believe it's the right thing to do, Neil. Right, we've got a government in Victoria which is corrupt, incompetent, and clearly exhausted. I want to be able to present an alternative.

[06:30]

And as alternative Premier I want to make it clear to Victorians that my values, the values of the party I lead are not consistent with Kellie-Jay Keen, never will be. Not consistent with Thomas Sewell or the Nazis who turned up on the steps of Parliament, never will be.

I will fight hate speech like that wherever I see it. And the party wants to govern in 2026 and beyond because our state needs it.

N Mitchell: Did you –

J Pesutto: – This is not going to help us get to that goal.

N Mitchell: Do you, you know, do you accept that the organisers of this rally and Moira Deeming had no idea the Nazis were turning up?

[07:00]

J Pesutto: I'm not in a position to say that I can accept that because – and the reason I say that is I'm not saying Moira necessarily knew, is that these people have known associations with Nazi sympathisers and white supremacists given their history and Thomas Sewell posted on social media that they were there to support that rally. So, my point is, I'm not saying Moira necessarily knew that, but I find it hard to believe that the other organisers didn't.

N Mitchell: Okay. Um, it says something about your preselection processes doesn't it, if Moira Deeming **[07:30]** got preselection?

J Pesutto: Look Neil, as talented as I like to think I am, I can't change the past, I can only assure all of our listeners of a couple of things. I do support free speech but I believe this – this position that I am taking is consistent with that. I can't support, and never will, hate speech. As to preselection processes, I am committed to making sure the party has better processes in place going forward. But again, free speech is an important part of what the Liberal party advocates. But hate speech is not and never will be.

[08:00]

N Mitchell: Under your leadership would you hope to avoid the uh preselection of a Moira Deeming?

J Pesutto: Well, again, I just want to indicate, people are entitled to have a broad range of views across any political organisation, that is going to happen. I don't have any objection to that at all. I have an objection and will act where anybody's activities take them to an association with either right-wing extremists or left-wing extremists. Either way, it's not what Victoria is about –

N Mitchell: – Okay –

J Pesutto: – and it's not the Victoria I want to lead.

[08:30]

N Mitchell: Do you want her out of the party?

J Pesutto: Uh I think it's consistent with the position I'm taking that the party will need to consider what it does if the motion gets up. I expect it will, but the party and the members will need to make a decision about that. I really need to be careful of the processes as they are for the members of the party to decide.

N Mitchell: Are you –

J Pesutto: But – I think they'll see – they'll see obvious conclusions uh if the motion succeeds.

N Mitchell: When's the parliamentary party meeting?

J Pesutto: I have to give a period of notice so I would expect that that would be very early next week.

[09:00]

N Mitchell: Look a bit silly if you don't win it, won't it?

J Pesutto: Well, I can only do what is right, Neil.

N Mitchell: Okay.

J Pesutto: I think this is the right thing to do.

N Mitchell: Just quickly, the other thing, the Nazi salute, ban it or not?

J Pesutto: I'm certainly open to it. I do understand the free speech arguments which are compelling and which I normally advocate myself and would, but I also have always understood that there need to be reasonable limitations on free speech. And anything, whether it's a salute or a symbol **[09:30]** that has the potential to incite violence and, you know, injury I think then engages a serious question – so, I'm very open to it and we'll work constructive with the government I think most sensible decent people are on the same page here.

N Mitchell: But that's interesting, you're open to it, do you want it or not?

J Pesutto: I do.

N Mitchell: Good.

J Pesutto: But I'm conscious that there'll need to be – there'll need to be a discussion, you know the normal careful drafting processes, to get that balance right. But I do think the potential and what we saw, I mean you talked about it at the top, **[10:00]** about you know what those salutes mean and what they have the potential to incite is a very serious thing and I believe it's justified as a limitation on free speech.

N Mitchell: Do you want to ban the hammer and sickle too? The hammer and sickle's killed a few million people over the years.

J Pesutto: Well – well true and I think the discussion always has to be a mature discussion about does it have the potential to incite or cause such disorder in our community that the public interest must prevail to the point of placing reasonable limitations so that's **[10:30]** always the question. It's not the same for every issue. Some issues might be offensive without being inciteful and so that for me is the crux of the question you have to answer.

N Mitchell: Okay, by the way, Angie Jones we've spoken to she says that tweet you referred to is right out of context and she had a history with the person tweeting it.

J Pesutto: Hmm do you – do you buy that?

N Mitchell: I don't know, I'll have a speak, I'll speak to her.

J Pesutto: You know, please do but I can't interpret it any other way.

N Mitchell: Thank you very much for your time.

[11:00]

J Pesutto: Pleasure, Neil.

N Mitchell: John Pesutto, state opposition leader.

END: **[11:02]**

ANNEXURE B (TRANSCRIPT OF THE ABC INTERVIEW)

Transcript of ABC Interview

START: **[00:00]**

J Pesutto: It was very concerning, Michael, and the reason I've taken this step is because I believe it's important as Victoria's alternative Premier to set out the values I stand for and the values my party stands for. The reason I'm bringing this motion, which will go to the party room hopefully next week, is because Moira Deeming not only attended the protest on the steps of parliament but was actively involved in different ways in the organisation and promotion of this protest at which there were speakers who have **[00:30]** known links with neo-Nazis and white-supremacists, and I won't have any of it. My party wants to govern because we live in a state where the government is corrupt, incompetent and tired and Victorians will need a new government and I want a government that uh – provide a government that will focus on the needs of Victorians, and these values that we saw displayed on the steps of parliament are not consistent with the values I and the Liberal Party stand for.

M Rowland: How confident are you you'll get the support on Friday within your party room to kick Moira Deeming **[01:00]** out?

J Pesutto: Well, I'm not sure it will go there on Friday. We need to observe some notice provisions in the Constitution of the Parliamentary Party, but I am confident because I believe in the Liberal Party, I've been a member of the Liberal Party for 30 years, the values that I possess and the values that the party stands for like free enterprise, free speech, uh the rule of law, uh support for communities and families, are all rights we stand for, but we don't stand with **[01:30]** neo-Nazis, we don't stand with white- supremacists. And I want to make that clear to all of our viewers that the team I lead will be focused on them and Victorians more generally.

M Rowland: Would you like to see Moira Deeming kicked out from the broader Liberal Party as well as the Parliamentary wing?

J Pesutto: Well, I'm going to focus, Michael, on the vote of the Parliamentary Party uh next week. There will be then a discussion presumably in the broader party. That's not for me to determine, **[02:00]** because – I am one member of the –

M Rowland: – But you are the leader though, John Pesutto. You are the leader of the Victorian Liberal Party –

J Pesutto: – Yeah. Yeah, and –

M Rowland: – do you have a view on whether this woman whose views you hold – you find abhorrent, or her appearance at the rally yesterday abhorrent, kicked out from the Liberal Party you lead?

J Pesutto: Uh, Michael, I think all of our viewers are very reasonable and sensible and they will understand that by me moving this motion for the reasons I have outlined, that there are certain unmistakable presumptions that they can draw about what I want **[02:30]** to happen in the broader party. The party I lead is a party that's there for all Victorians, we are inclusive, we want to engage with everybody, and I promise everybody watching that the party I lead can be a voice for all of you, for all Victorians. And what I'm doing is a statement that we will not tolerate or ever accept any association with neo-Nazis and white-supremacists or anybody who sympathises with them.

[03:00]

M Rowland: Didn't the Liberal Party pretty much know, John Pesutto, what it was getting when Moira Deeming was pre-selected? She holds some pretty, as you'd well know, out-there views. She is against not just vaccine mandates, she's against Covid vaccines full stop. So, wasn't there – shouldn't it have been a bit – a bit of a case "of buyer beware" for the Liberal Party before they pre-selected Moira Deeming in the first place?

J Pesutto: Well, look Michael, can I make a broader point, that I think it is important for me to emphasise? I support free speech and **[03:30]** there are people who have different views, and what I've always said, on the ABC and everywhere else for that matter, is that debates should always be civil, uh courteous, robust, sure, but the debates must be respectful. Now, the reason I'm taking this step is because Nazis and white-supremacists don't make debates respectful and civil, that's the first thing I would say. The other thing I would say, Michael, is that whilst I'd like to think I am a man of enormous talent I can't change the past. **[04:00]** And I'm dealing with things fourteen weeks into my leadership to show Victorians that every step that I have taken since becoming leader in December, that I am determined to be the best possible alternative government that Victorians are crying out for. And that's why I am taking this step.

M Rowland: And finally, John Pesutto, calls now for the Victorian Government to move to ban, outlaw, the Nazi salute. Would the Liberal Party support that if it were to happen?

J Pesutto: Yeah, we're very open to this. We'll work with the government very constructively, as we have in the past, as with the banning **[04:30]** of the swastika. We'll continue to work constructively. I want to make it clear we support free speech but every sensible and reasonable person will know, that there have to be some limits on free

speech. And people who engage in actions and gestures which incite hate and violence will never be acceptable in our state.

END: **[04:52]**

ANNEXURE C (TRANSCRIPT OF THE PRESS CONFERENCE)

Transcript of the Press Conference

START: **[00:00]**

J Pesutto: We all good to go?

Unknown: Yeah.

J Pesutto: Alright. Uh you've seen my statement from last night uh, regarding Moira Deeming. I have not taken this decision lightly but the events which were drawn to my attention over the weekend when not far from where we stand there was a protest which attracted Nazis on the steps of this magnificent Parliament. It will never be acceptable in Victoria for Nazis to get a platform **[00:30]** or anyone who shares their views or anyone who works with them to help them promote their odious agenda. This House stands for the people and the values I possess and the values that my party supports and advocates will always be to include all Victorians, no matter what their background, that's why I've taken this action today. What came to light on the weekend when seeing the awful circumstances on the steps of this Parliament **[01:00]** were that Moira Deeming, a member of the Parliamentary Liberal Party, had actively participated with and worked with the organisers of the rally. That rally was organised by people who have known and established links with people who have Nazi sympathies, promote white supremacist views and ethno-fascist views. That is odious. It is unacceptable.

[01:30]

I will never, ever accept any member of the Parliamentary Liberal Party under my leadership ever associating with anybody who shares a platform with people who peddle hate, division and attack people for who they are. As leader of the Victorian Liberal Party, as the alternative premier of Victoria, as somebody who leads a team, who wants to be an effective opposition focused on the priorities of the Victorian people and somebody who wants to lead **[02:00]** a government from 2026, I want to assure all Victorians that the party that I lead along with my colleagues, David Southwick, Georgie Crozier, and Matt Bach, and all of our other colleagues that we are totally committed to leading an inclusive Liberal Party in Victoria that is there for all people, no matter what your background. The Liberal Party I lead will always be a voice for you. I understand the significance of this matter and I want to assure all Victorians **[02:30]** I am a strong supporter of free speech, but free speech doesn't include hate speech. And the Nazis who turned up on Saturday and who said they had turned up to support the rally, peddle hate and I will never accept that. As leader, I will be moving the motion uh to expel Moira Deeming from the Parliamentary Liberal Party. The processes of that are dealt in the Parliamentary Party's constitution **[03:00]** and they will take place over the coming days, so they will be observed, and the party room will make a decision, but this is a necessary step, I believe, to making sure that

we are not only an effective opposition but ready to govern in a way that Victorians will embrace wholeheartedly in 2026. Uh I'll take some questions.

Question: Why haven't you done this earlier? Moira Deeming had expressed her views against the trans community well before the weekend.

J Pesutto: I've taken this step now **[03:30]** because the events of the weekend showed uh upon further investigation that the association between Moira Deeming and the organisers of the rally were that those organisers have shared platforms with fascists, ethno-nationalists, white supremacists and Nazis and it became clear to me on further investigation following the rally, and the ugly scenes that were seen on the streets of this Parliament, but just before it, on the steps of this Parliament were totally unacceptable **[04:00]** and that's why I've taken this action now.

Question: [inaudible] So, can we just clarify, would've – if she attended the event but the Nazis sympathizers didn't come, sorry about my voice, um would've that been acceptable? Was it the fact that she went and then came? If she had have [*sic*] left at that point – like, when did it cross the line exactly?

J Pesutto: Okay, so let me – let me go through a few of the facts here. Uh, it's clear that Ms Deeming, from social media, escorted uh, at least one of the organisers through this very Parliament, Kellie-Jay Keen uh through this Parliament.

[04:30]

Then attended the rally, stayed at the rally when Nazis attended and then celebrated with organisers of the rally, after the rally and ugly scenes had occurred on the steps of this Parliament and the street before it. One of the people with whom Ms Deeming was celebrating is Angie Jones and she tweeted on Saturday night, after the ugly scenes that we saw on the steps of this Parliament, as follows, quote **[05:00]** '*Nazis and women want to get rid of pedos, why don't you?*' That is totally unacceptable, and I don't think any reasonable, decent minded person would think that that is okay. That is all material on social media, it's publicly available. I should say this, free speech in a brilliant democracy, like Victoria's, must be able to accommodate different views. I strongly believe, and have always said, **[05:30]** that debate in our society must be civil, it must be respectful, it must be inclusive but never hateful, never speech that vilifies other people for who they are. And, that is possible in a democracy like ours. So, I'm not here to say that people can't have different views, I'm here to say it will never be acceptable in this state, Victoria, as a member of the Liberal Party **[06:00]** to associate with anybody who is connected with or shares platforms with Nazis, white supremacists, ethno-nationalists or whatever other odious agenda someone wishes to peddle.

Question: So, just to be clear, is it her actions after the um gentlemen that did the Nazi salute on the steps, is it Moira Deeming's actions after that that have prompted your actions to try and expel?

J Pesutto: Um, thanks Simon.

[06:30]

It's more than that. What Moira Deeming's actions both before, during and after the rally demonstrate is that she's had an association, upon further investigation it's clear, Moira Deeming has had an association with people who organised the rally, along with her assistance, who have shared platforms with and viewpoints with people who promote Nazi views or sympathies. That's the first thing. Secondly, Ms Deeming stayed at the rally **[07:00]** when the Nazis arrived. Thirdly, having seen the ugly scenes and having had an opportunity to disown and dissociate from those very people, Ms Deeming chose to celebrate as evidenced on social media. Now, as the leader, a responsible leader, of a major political party that wants to govern for all Victorians from 2026 and in the meantime be an effective, mature, responsible opposition **[07:30]** that can't and is not acceptable. We are a party for all Victorians and when I talk about opportunity, I want opportunity for all Victorians no matter what your background, no matter what your preferences or orientation. We all share an underlying humanity and in that alone our commitment as a major political party that wants to govern and govern well and responsibly for Victorians must be that we are there for everyone.

[08:00]

Question: What responsibility does –
[inaudible questions]
– the Liberal Party take for preselecting Moira Deeming, even after someone such as Bernie Finn was booted out in the same fashion you're trying to boot her out now?

J Pesutto: As talented as I would like to think I am, I can't change the past. I can only say that along with my colleagues, David, Georgie and Matt, we are a new leadership team. We've been in our positions for around about fourteen weeks and we're making changes to demonstrate to all Victorians that we will lead a – an effective **[08:30]** and responsible opposition and we want to be able to present in 2026 as the alternative government and to win government, to govern well for Victoria. That's what we want to do.

Question: [inaudible – journalists speaking over each other]
But were you not aware –

J Pesutto: – Uh, one at a – sorry – I – I'll get to all of your questions.

Question: Is what you're saying though, just so I can get it straight, is that it's okay for a member of the Liberal Party to be anti-trans as long as they express that view in a civilised way um that's not hate speech?

J Pesutto: We have to be careful to make sure that in our **[09:00]** advanced democracy there is the capacity for people to disagree. That is going to happen. There are debates in this Parliament, in all major political parties, on these issues and what I urge, as one of our state's political leaders, is that all of us, all Victorians, owe it to ourselves and particularly to each other to be respectful in the way we conduct debates. Now, what has prompted my action over night is that a member of the Parliamentary Party of the Liberal Party was working **[09:30]** with people who have shared platforms and promoted people who have Nazi views and white supremacist views. So, my point, Sharnelle, is that in our democracy we have to be able to accommodate different views. People are going to have different viewpoints. We have to respect that part of our democracy even though sometimes we may not like the views that other people have but we have to be respectful and that's just not [*sic*] lip service to being civil and respectful, it conditions the debate, **[10:00]** so that we avoid incitement, we avoid actions that cause harm to other people. If we are true to that, faithful to the idea that we can live in a democracy where we respect each other, then we will find those debates won't veer off so that Nazis can come and participate in protests like we saw on Saturday.

Question: So, were you not aware of the event, because she sent flyers to a number of MPs, she sent a flyer to me uh over a week ago and **[10:30]** if you didn't know, I guess, is that something you're disappointed that even other Liberal MPs or staff didn't tell you? Because you seem to say that it's not just her attendance, it's that she also helped organise it. So, you know, she's been organising this for a long time now, at what point were you made aware and why didn't you know?

J Pesutto: Well, the events of Saturday drew my attention to the seriousness of the issue but let me say this, every person who is elected to the Victorian Parliament has to take responsibility for their actions. I'm not there and nor is Daniel Andrews **[11:00]** for his members or Samantha Ratnam for her members. We're not there to babysit the activities of every MP. I have a lot of responsibilities with David, Georgie and Matt as the leadership team of the Liberal Party. I can't babysit every MP. Every MP has a responsibility, not just to this Parliament but to the people they represent to – to conduct themselves in a way which respects our democracy and doesn't provide an opening for Nazis or whomever else **[11:30]** who peddles odious and hateful views to jump into activities whether they're

protests or public meetings each member of Parliament must take responsibility for their actions.

Question: Who else was there, from the Liberal Party?

J Pesutto: On the advice I have, I – I understand that Moira Deeming was the only person who participated in the rally, I'm not aware of any other MP who was there, from the Liberal Party, but that's the advice I have at the moment.

Question: Moira Deeming says in the video posted after that there **[12:00]** were other members of the Liberal Party there, they didn't join her on the steps but that they were there in the crowd. Have you actively spoken to your entire party to make sure no one else was there?

J Pesutto: Look, I will continue to look into the matter but my main concern and what has prompted my action over night to submit this motion to the party room is that it's clear on the evidence we've been able to gather overnight that Moira Deeming has worked with these organisers and that these organisers, **[12:30]** not talking about Moira, but these organisers have shared platforms, done videos with, worked with people who have Nazis views, white supremacist views, totally unacceptable in our state.

Question: Are you comfortable the motion will pass? Um, and is it a test of your leadership? You only won that by one vote um, there is one person that's now leaving the party, potentially. Um, you know, do you see it in that sort of context?

J Pesutto: I'm confident I'll have the support of the party room but you're all seasoned journalists, **[13:00]** every day is a test of leadership and I would consider it a great failure of leadership if I didn't take this action. I'm taking this action because it's necessary, it's right, it will tell Victorians that as new Liberal leader along with David, Georgie and Matt we are committed to providing Victorians with an alternative vison and a party that is ready to govern in 2026.

Question: There're MPs that are quite miffed by this action and haven't heard from you at all **[13:30]** – much at all in t the last 12 hours, and frustrated that you're prosecuting this through the media before speaking with them, what is your message to them, especially trying to get them on s – on your side to vote for this motion?

J Pesutto: Well, between my leadership colleagues and I we have contacted every member of the Parliamentary Party. I spoke to many as I could uh overnight. Time didn't

permit me to reach everybody in the party room but that's why we shared that responsibility between us as members of the leadership team.

[14:00]

Can I say this? I have been speaking to the Victorian people through media this morning because I think the Victorian people need to know why I have put this motion forward. It will be for the party room and the party room alone, each member of that party room, to make a decision next week on this matter. It won't be my decision. I'm putting the proposal to the party room and I respect the fact that it will be every member of that party room voting as a group to decide **[14:30]** the outcome of that motion. I'm confident it will pass but I'm also respectful of the fact that they will decide the answer to that. But, I hope you'll all understand, as members of the media, it's important for me to explain to the Victorian people why I'm taking this action. I do respect that the party room itself will make the decision.

Question: What if –

– If it doesn't pass?

Yeah.

Yeah, if it doesn't pass what happens?

J Pesutto: I think, you all know me, I have a tendency to bounce back from anything but that's not a scenario **[15:00]** I'm particularly worried about. I'm confident the motion will pass. Politics carries with it great responsibilities and those responsibilities often involve tough decisions, but this is the right decision. It's a necessary decision and it will tell tough decisions, but this is the right decision. It's a necessary decision and it will tell Victorians that we are serious about being a viable opposition and serious about forming government in 2026.

Question: Is it a simple majority that the motion needs to pass? And if it does just pass by one vote um, is it something, you know, do you think that's the **[15:30]** endorsement of your party room that they agree? What sort of the benchmark do you think you need?

J Pesutto: Oh, come on Annika. I won the leadership by one vote.

Question: [unintelligible]

J Pesutto: Uh, I'm not concerned about uh, the majority, I'm just concerned about the uh, process being respected and every member of the party room having an opportunity to consider my reasons, to hear in response from Moira, who obviously will have a chance to put her side of the argument to the party room as well. They'll decide it.

[16:00]

Um, and if a majority emerges, as I'm confident it will, we'll move forward to achieve the things I've outlined before: providing a viable opposition, forming government in 2026.

Question: Is this a big distraction for you in this parliamentary sitting?

J Pesutto: This will not be a distraction at all for my colleagues and I who will continue to pursue the Andrews Labor Government; it's corrupt, it's incompetent, it's exhausted. We're going to pursue the Robert Redlich Letter and we hope to establish a select committee in the upper house, if we can attract the necessary majority **[16:30]** in the upper house, as we are working hard to do that. We will also pursue the Minster for fiascos: Danny Pearson. Danny is in the media yet again giving Victorians yet another reason why he should be sacked from the Ministry. Let me just put this in context, in any other jurisdiction in this country if a minster sat around a cabinet table with a direct pecuniary interest in the matters he was helping decide upon, they would be sacked, in seconds flat.

[17:00]

That's happened in other states. Why is it that Victoria has become a state where you can be racked by a blatant pecuniary conflict of interest and keep your job? That is wrong, it's unethical, it's corruption. I say that deliberately. In my view, the reason we have conflict of interest provisions is to guard against minsters of the Crown **[17:30]** and other public servants from ever profiting or being seen to profit from their positions. You will all know that for weeks now, we have been peppering Minster Pearson with questions asking for basic information, even information about whether he ever recused himself from cabinet when decisions came up.

Question: When do you –

J Pesutto: – He's refused – He's refused to answer. If you look at his answers in the Hansard and I invite you, look at the Hansard.

[18:00]

See the questions I have been asking Minster Pearson, ask yourself first, "are they reasonable questions?" Then ask yourself second "is Danny Pearson hiding something?" I think you'll find the answer to both questions is "yes."

Question: When do you anticipate the vote will happen, to expel Moira Deeming?

J Pesutto: Well – well, the vote will occur early next week, I'll set a time I have to advise with notice so that will mean that the meeting will have to take place next week. I'm conscious **[18:30]** that MPs have other work to do in their communities as well so I will do my best to bring this on quickly subject to there being enough time for people to observe the notice period and prepare accordingly uh but it's an important meeting and it will occur early next week.

Question: And is there a path back for her? There's been other cases where MPs have left the party and, you know, made amends or whatever – is there a way that, I guess, this could be reversed down the track, before the next election? Has she made any indication to you that it's not something she wants and that she still wants to be a Liberal MP?

[19:00]

J Pesutto: Um, we thought as a leadership group, and myself particularly as leader, about whether there were alternatives to the course I've taken. I thought about that deliberately at length considering all sides of the question. It became clear to me that there wasn't really any alternative but to do this. The reason being, any question of an association, even indirectly, with Nazis, white supremacists, **[19:30]** ethno-fascists or whatever else is so odious in 2023, as it should be, that I can't see a way back and Victorians need to know we will just call it out. We will have nothing to do with it. Under my leadership we will never have anything to do with that and more to the point we will oppose it wherever we see it and that's why, albeit early in our leadership, we've taken a strong decisive step to say to Victorians and to say **[20:00]** to those mobsters, those Nazis on the steps of this magnificent Parliament on Saturday "you are not going to get a foothold in this state. We will oppose you wherever we can and we will stop you wherever we must."

Question: Some party members are threatening to walk out when you spoke [inaudible] is it a price you are willing to pay?

J Pesutto: I hope and trust that party members will see that the step I've taken is not about freedom of speech, it's about whether we will ever abide **[20:30]** by the odious tactics and measures taken by Nazis and white supremacists. We saw that on the steps of this Parliament, and I say to all Liberal Party members, understand why I have put this motion forward. We are a responsible party that seeks to govern for all Victorians in their best interests. We cannot and will never be able to do so if we are prepared to stand with those people we saw on the steps who peddle violence and hate.

[21:00]

The party I lead, the values we share as a party, the values and principles the party stands for mean that this action is necessary to tell Victorians we want to be a strong, effective, principled, ethical opposition that is ready to govern in 2026.

Question: Will you accept her uh if she is expelled from the party, Moira Deeming, will you accept her vote that – on matters the coalition is trying to get up in the upper house. For instance, her vote on Robert Redlich **[21:30]** – oh sorry, the select committee to which you're trying to get Robert Redlich?

J Pesutto: I – I don't want to get into those matters, only because I don't want to pre-empt the outcome of next week's vote, but we will endeavour at all times in the conduct of our strategy in the upper house to put issues on their merits and if people consider those on their merits, we hope that they will support us. We will always be considered and mature in the way we approach these things. With the Redlich Letter, we have worked constructively uh – uh and cooperatively **[22:00]** with the crossbench and we're confident that something may eventuate from that. That's an example of us working constructively in the upper house in the interests of all Victorians to make sure the truth about that scandal comes out and that Robert Redlich and personnel from Callida, the independent auditor, can appear before Parliament and under privilege, give evidence about what went on. They need to be given that opportunity.

Question: To clarify an earlier point, you were aware of the rally and her promotion of the rally prior to Saturday but you weren't aware of links **[22:30]** between some of the organisers and white nationalists?

J Pesutto: Uh no, I wasn't aware of those links and I uh didn't see her material on social media or the comments she – I – I understand she made in the Parliament. What drew my attention on the weekend were the ugly scenes at the protest and we immediately started investigating the matter, had a very lengthy meeting with Moira Deeming yesterday where we exhausted inquiries into all manner of relevant matters arising from that and then I made the decision following that **[23:00]** to bring on this motion.

Question: Do you think this will have any impact on the Aston by-election, some MPs are saying that it will um, I just wondered if you think it's a distraction and unfortunate, I guess, in its timing?

J Pesutto: I don't think this will have any impact on the Aston by-election.

Question: Is it plausible that Ms Deeming was unaware of the extremist links of the organisers and if she was unaware do you think it's fair to kick her out?

J Pesutto: I don't think it's open to me to be satisfied that Moira didn't know about their history.

[23:30]

Uh it took us all of about twenty minutes or so after the rally on Saturday to investigate the histories of these people uh Kellie-Jay Keen has a rap sheet of associations on the public record with people known to be fascists, including people like David Duke, former head of the Klu [*sic*] Klux Clan, took us only a few minutes. I – I just can't be satisfied that Moira didn't know **[24:00]** but can I make this other point? When we conducted our investigations into how the events of Saturday unfolded, it wasn't just that Moira had escorted uh organisers through the precinct of the Parliament. It wasn't just that Moira stayed at the protest when Nazis turned up, it was the celebration you can see on social media afterwards, which tells you perhaps all you need to know about why it's necessary to bring this motion. It's saying, **[24:30]** "I am prepared to associate with these people" and not take the opportunity to walk away from them and disown the odious things that they have shared with people I've described before.

Question: Once you've spoken to the entire party to work out if any other MPs were there, can you guarantee that you will publicly announce who those MPs were?

J Pesutto: Uh – I – uh of course, if information comes my way that suggests there are other people who had similar associations, then I would but I don't believe that to be the case on the advice I have at the moment.

[25:00]

Question: Do you believe it could just be members though, not MPs that were there, Liberal Party members?

J Pesutto: I – I don't have that information, Simon, uh – uh if there are Liberal Party members, I – I'm not in a position to know whether they went, my inquiries to date have been about whether MPs were there.

Question: And – was, when you did question Moira Deeming about the association, did she imply to you that she didn't know the links to Nazis and – and things like this and she was purely just organising it? What did she say when the claim was put to her that she should have known?

[25:30]

J Pesutto: Look, I hope you'll understand, I'm not going to go into the details of the meeting we had. I'm prepared to say it was a lengthy meeting, we went through a whole range of issues uh, and I was satisfied on reflection and consideration of all the matters we discussed, that this was the appropriate action to take and I think you can draw the relevant inferences from that.

Question: Moira Deeming boasted that she could secure a $100,000 donation to the party if she was pre-selected. Did the party ever receive that donation and if it did will it pay it back if she is successfully expelled?

[26:00]

J Pesutto: I'm not in a position to know the details around that donation. I – I'm not aware of any uh anything other than compliance with the electoral rules around that but if information comes to light I will look at it uh, Mitch, but I have nothing to hand at the moment.

Question: If the government moved urgent legislation to ban the Nazi salute, would the Coalition support that?

J Pesutto: Uh yes. Yes. Can I acknowledge David Southwick behind me who was so instrumental uh in the last Parliament to ban the Swastika and given our position on the Swastika, **[26:30]** I can't see how you could rationally distinguish uh the salute, the Nazi salute. It is as much an incitement of hate and violence as the Swastika itself, maybe even worse because it is a gesture performed by a person and so we would not take a different view having led that process and then worked with the government on that. So, we are open to working with the government on this measure uh **[27:00]** we need to take this very seriously this threat as evidenced most recently on Saturday afternoon on the steps of this Parliament. And we will do so.

Question: I know you're not a fan of hypotheticals but if you were Opposition Leader and Moira Deeming was pre-selected and her views were made public would you allowed that that to go ahead?

J Pesutto: I can't change the past, uh Benita uh but what I can say, to reiterate, as a new leadership team, myself, David Southwick, Georgie Crozier and Matt Bach, we're new to these roles **[27:30]** and you will have seen over recent weeks decisive steps that we've taken to build an effective, strong, responsible Opposition that Victorians will embrace and hopefully in 2026, doing all the work we need to, to form a government in 2026.

Question: To be fair, David –

– You spoke about looking at vetting candidates better in the future, what– what has been done in that space so far?

J Pesutto: Given uh, the result in the State election last year, I think it's fair to say that we need to review a whole range of things in our process.

[28:00]

We know that. And vetting candidates uh making sure we have the best possible candidates who can connect with their communities and who can actually focus and do the work that their communities want them to focus on, cost of living, poor roads, lack of access to hospitals. Doing the work to focus on those issues everyday of every week, I'll be looking to support candidates who can commit to focusing on the issues that actually matter to the people on the ground.

[28:30]

Question: You say you have a new leadership team, David and Georgie were part of the leadership team that ultimately booted Bernie Finn out which then allowed Moira Deeming to be pre-selected so how can you use that argument that you have a new leadership team that is [inaudible]

J Pesutto: We're a new team uh we're a group of four, we work very closely together and people go through different phases of their career Simon. And uh I've been through that as you all know and all I can say is that there is an energy between the four of us **[29:00]** and we're working really well together and I'm just really proud of the processes we've gone through, particularly overnight, which is not easy, Simon. And we've made a decision which I think is responsible and which will connect with Victorians right across our state.

Question: Just on the Nazi salute um, when the Swastika debate was happening um the IPA was one of the groups that um recommended to the Liberal Party to oppose the bans, saying it was against free speech um there are Liberal members who are members of the IPA, **[29:30]** a lot of you have connections to the IPA, Evan Mulholland was there at the time, and was one of the people that –

J Pesutto: – Sorry. Sorry Anika was it –

Question: – Evan Mulholland –

J Pesutto: – Oh, yep. Yep –

Question: – who's now an MP, was one of the people in the IPA at the time um, when they opposed that ban. Are you confident that everyone in the party room is on board with a – um the – the government's proposal to ban the salute given some of the links towards um, the last debate when there was support for the free speech argument, essentially?

J Pesutto: Yeah. Evan Mulholland is a young up-and-comer, a rising star in the party and **[30:00]** I'm really excited that he's a member of the team. He's proving himself as Shadow Cabinet Secretary to be effective and responsible and he's part of a team now. And we will go through robust debates internally, that's a part of being in the Liberal Party. Uh we do have robust debates about issues, but we took a strong position on the banning of the Swastika, and as a party we made it clear, we were never going to countenance hateful uh gestures or symbols like that and having supported and led **[30:30]** the debate on the banning of the Swastika it is only consistent and it follows that of course we would ban anything else that had a similar effect and I think if you look at the effect and the potential ramifications of the Nazi salute it is perhaps even more prone to incite violence than anything else. So, there would be a consistency in our position, and I think Evan would get that, but we will have a debate and Evan, like everybody else, will have a chance to air their views inside the party room but once we have made a decision that's what **[31:00]** we will prosecute outside the party room.

Question: Across 2020 and 2021 there were anti-lockdown protests organised by people with extremist links and some of those events were attended by Liberal MPs, I'm aware you weren't in Parliament at the time but if you were leader and you were in Parliament would you have supported those Liberal MPs being kicked out of the party, as well?

J Pesutto: I'm not going to go into uh, what I would have done in the past. I think you can draw conclusions about what this new leadership team is trying to achieve **[31:30]** in the way we are going about this. We are making it clear to the broader Liberal Party that to be an effective opposition, to be able to govern from 2026, we need to take these strong and decisive steps to show that we will never support and that we will always oppose anything that is hateful or liable to incite violence. So that's the approach we are taking now. I can't change the past, but we can determine our future and that's what we are going to do. Thank you everybody. Oh sorry.

Question: Sorry just –

J Pesutto: – One more? Yep.

[32:00]

Question: Uh, shouldn't someone in the leadership team have known that Moira was promoting the rally, she spoke about it in Parliament, two people in the leadership team are in that House, why didn't anyone warn her about her attendance?

J Pesutto: As I said before, we are the leadership team with a lot of responsibilities and we're not there to babysit every MPs [*sic*] – every MP. And we've got to be clear about this, every person in this Parliament, Liberal or otherwise, has a responsibility. And they can't shirk that responsibility by someone – by someone else saying **[32:30]** 'you shouldn't have done XYZ'. It was incumbent upon Moira as a member of Parliament to understand the dangerous consequences that can come when you are associated with people who share platforms with Nazis and white supremacists. Everybody must be responsible for their actions.

Question: Did she offer to do a blanket condemnation of Nazism and everything else associated with the salute and what went on that you didn't approve of and why wasn't that enough?

[33:00]

J Pesutto: I'm not going to go into the details of the discussion, suffice it to say, we explored all sides of the question and as party leader, having reflected on that discussion and considered everything that came out of that discussion, this was, I am completely satisfied, the appropriate action to take. Thank you very much.

END: **[33:19]**

ANNEXURE D (EXPULSION MOTION AND DOSSIER)

John Pesutto MP
Leader of the Opposition
Victorian Liberal Leader

JohnPesutto.com.au

20 March 2023

Dear Ms Deeming,

1. I write to give you notice of my intention to call a special meeting of the Victorian Parliamentary Party on 27 March 2023 and that — for the reasons in the motion set out herein — I will move a motion, pursuant to clauses 58 to 60 of the *Victorian Parliamentary Liberal Party Constitution*, dated 30 August 2022, that you be expelled from the Victorian Parliamentary Party.
2. The wording of the motion is that:

> "Pursuant to the *Victorian Parliamentary Liberal Party Constitution*, dated 30 August 2022, (the **Constitution**), that the Victorian Parliamentary Liberal party expel Ms Moira Deeming from the Parliamentary Party.
>
> Pursuant to clauses 57 and 59 of the Constitution, the reasons for such expulsion being, on the evidence contained in the attached Annexure hereto, that Ms Deeming, on 19 March 2023 and in days preceding that day, conducted activities in a manner likely to bring discredit on the Parliament or the Parliamentary Party, such conduct by:
>
> (a) on 19 March 2023 and on days prior organising, promoting and attending a rally where Kellie-Jay Keen (also known as Posie Parker), was the principal speaker in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists; and
>
> (b) on 19 March 2023, meeting with and publishing a video with Kellie-Jay Keen, Katherine Deeves, and Angie Jones and that Angie Jones, on that day posted on Twitter words that, in the mind of any reasonable and lay observer, made association with Nazis including on 4:41pm by posting the words "Nazis and women want to get rid of paedo filth. Why don't you", that quote being set out in the Annexure hereto, which Annexure also contains a hyperlink to the video referred to in this reason."

3. At the meeting on 27 March 2023, you will be given an opportunity to explain your conduct before a vote of the Parliamentary Party.
4. If the motion is passed at that meeting by absolute majority of the Parliamentary Party, pursuant to cl 58 of the Constitution, you will be expelled from the Parliamentary Party.

John Pesutto

David Southwick

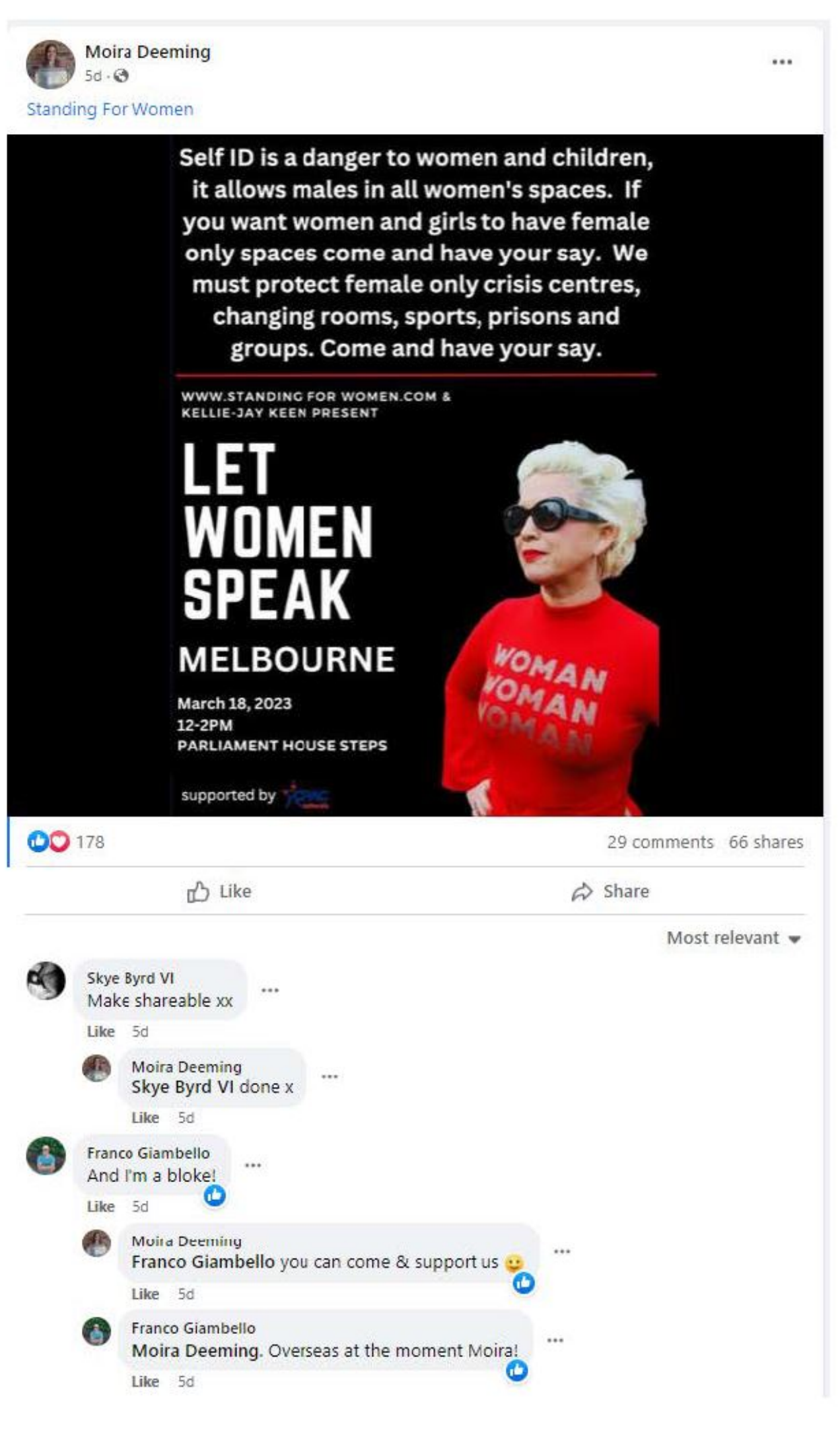
Georgie Crozier

Dr Matt Bach

ANNEXURE

A. Promotion of and Participation in the 18 March 2023 "Let Women Speak" Rally

5. On 18 March 2023, Moira Deeming organised, attended and participated in an event held on the steps of Parliament House entitled "*Let Women Speak*", which was hosted by Kellie-Jay Keen's (also known as "Posie Parker"'s) organisation called "Standing for Women". Ms Deeming's involvement in the rally is documented, including by reference to the following material:



Moira Deeming
5d ·
Standing For Women

Self ID is a danger to women and children, it allows males in all women's spaces. If you want women and girls to have female only spaces come and have your say. We must protect female only crisis centres, changing rooms, sports, prisons and groups. Come and have your say.
WWW.STANDING FOR WOMEN.COM & KELLIE-JAY KEEN PRESENT
LET WOMEN SPEAK
MELBOURNE
March 18, 2023
12-2PM
PARLIAMENT HOUSE STEPS
supported by
WOMAN WOMAN WOMAN

178 · 29 comments · 66 shares

Skye Byrd VI
Make shareable xx
Like 5d

Moira Deeming
Skye Byrd VI done x
Like 5d

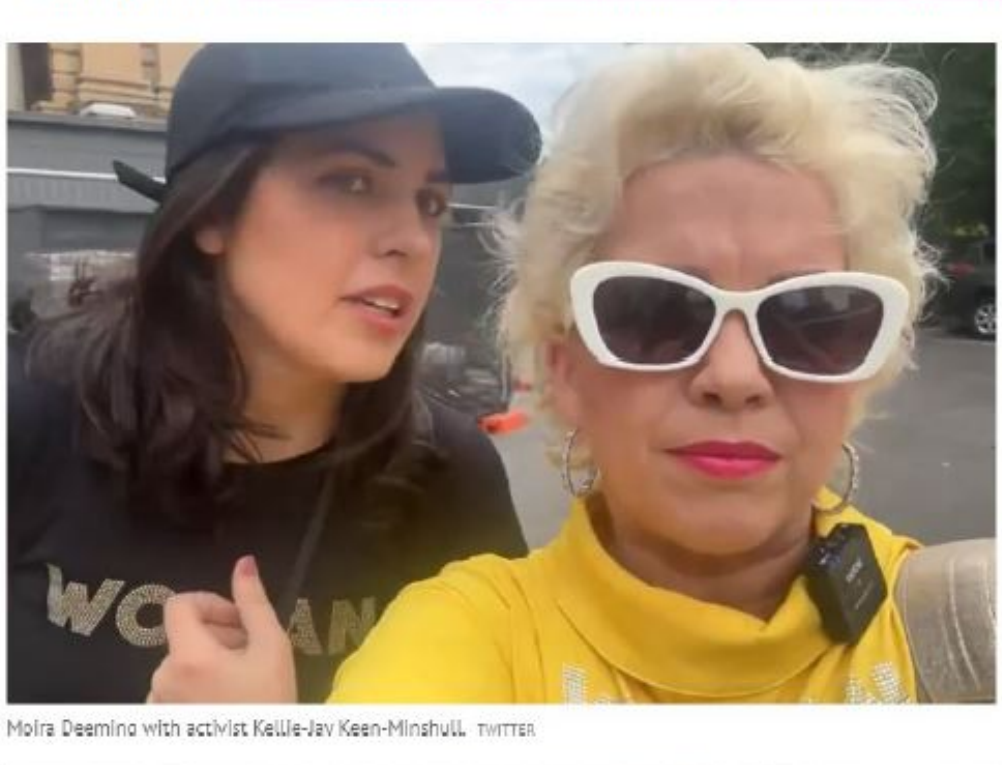
Franco Giambello
And I'm a bloke!
Like 5d

Moira Deeming
Franco Giambello you can come & support us 🙂
Like 5d

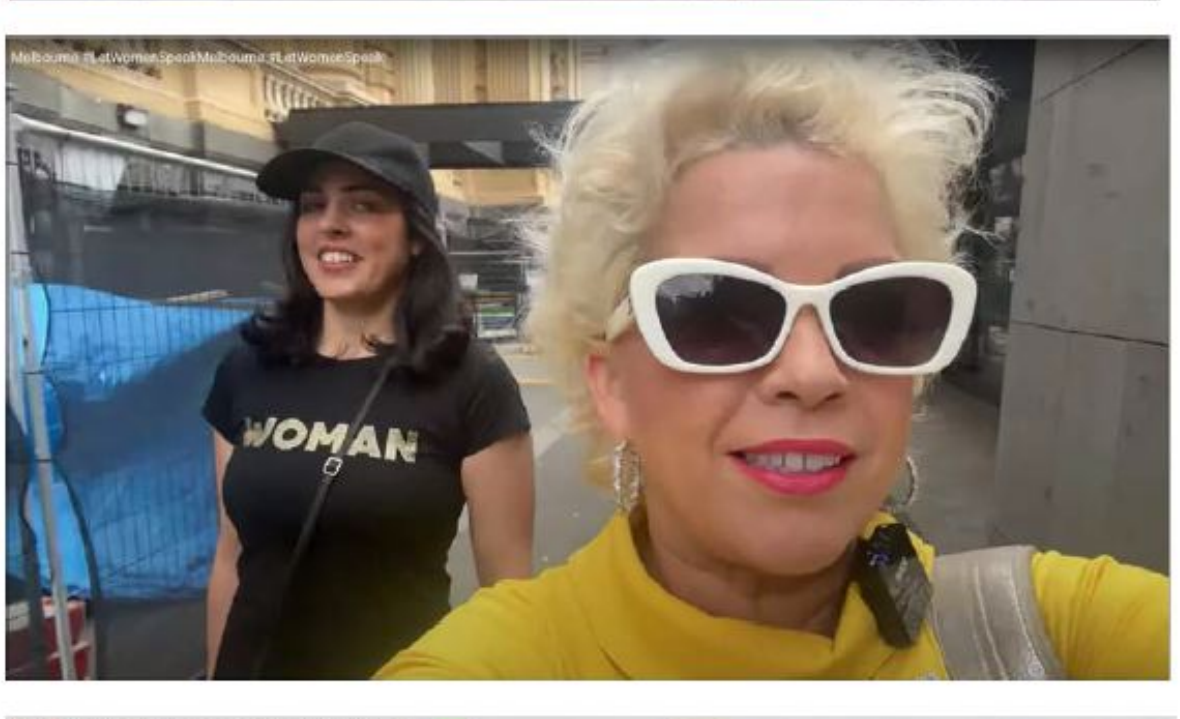
Franco Giambello
Moira Deeming. Overseas at the moment Moira!
Like 5d

6. On 18 March 2023, Ms Deeming was photographed and videotaped with Keen, who was the key speaker at the rally, in the secured carpark of Parliament House, and Parliament grounds, which is documented, including by reference to the following material:

See hyperlink: https://www.youtube.com/watch?v=9o47VZvDqAA&t=754s



Moira Deeming with activist Kellie-Jay Keen-Minshull. TWITTER



B. Kellie-Jay Keen's Association with Far-Right Extremists

7. In October 2019, Keen appeared in a video interview with Jean-François Gariépy, a far-right YouTuber who advocates for a "white ethno-state" and who has made videos with neo-Nazis Richard B. Spencer and Mark Collett as well as former Ku Klux Klan leader David Duke.[1] The interview with Jean-François Gariépy is documented by the following material:

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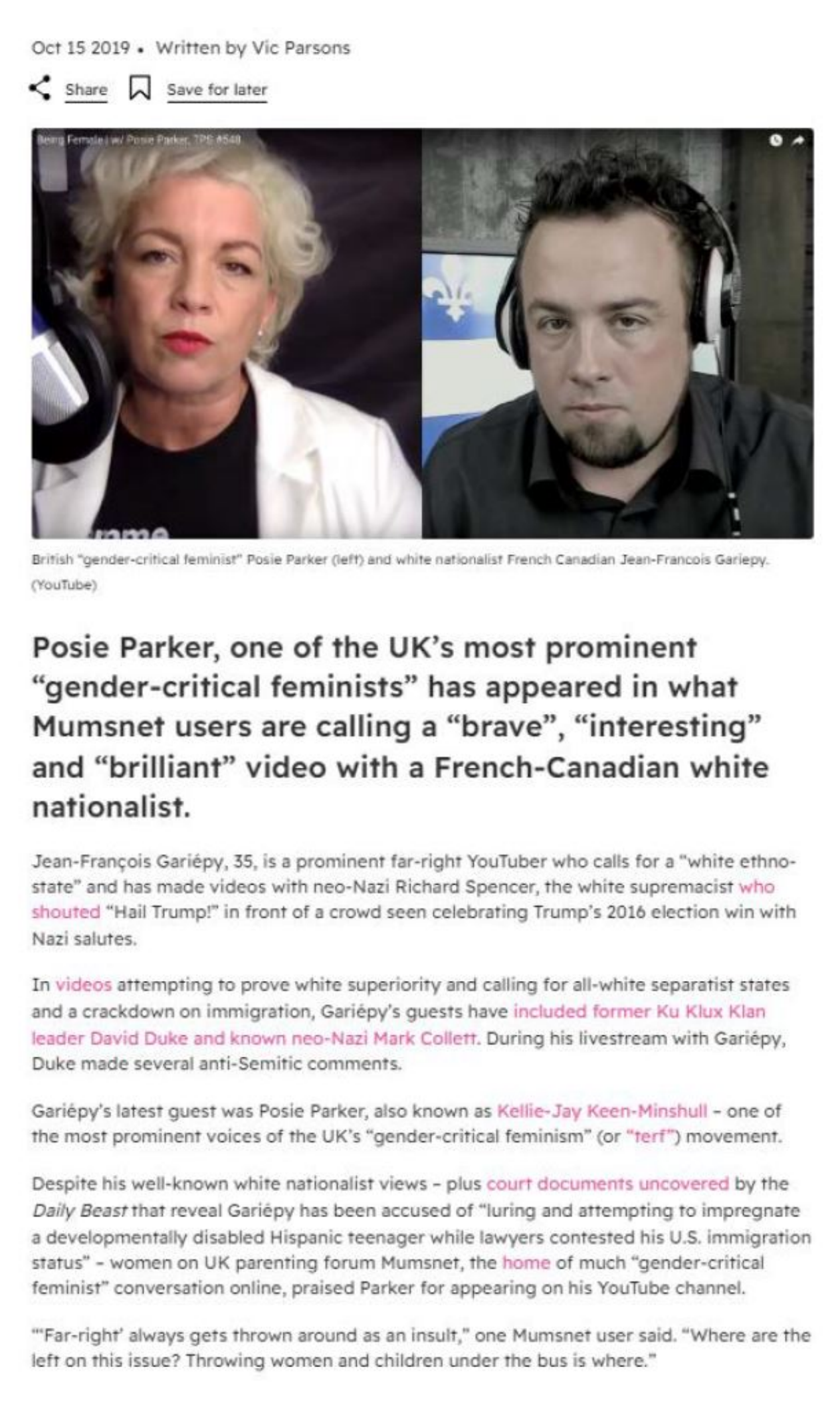
[1] Parsons, Vic (15 October 2019). "Gender-critical feminist Posie Parker in video with white nationalist YouTuber – and a lot of Mumsnet users are fine with it". *Pink News*. Retrieved 19 October 2022.



Oct 15 2019 • Written by Vic Parsons

Share Save for later

British "gender-critical feminist" Posie Parker (left) and white nationalist French Canadian Jean-Francois Gariepy. (YouTube)

Posie Parker, one of the UK's most prominent "gender-critical feminists" has appeared in what Mumsnet users are calling a "brave", "interesting" and "brilliant" video with a French-Canadian white nationalist.

Jean-François Gariépy, 35, is a prominent far-right YouTuber who calls for a "white ethno-state" and has made videos with neo-Nazi Richard Spencer, the white supremacist who shouted "Hail Trump!" in front of a crowd seen celebrating Trump's 2016 election win with Nazi salutes.

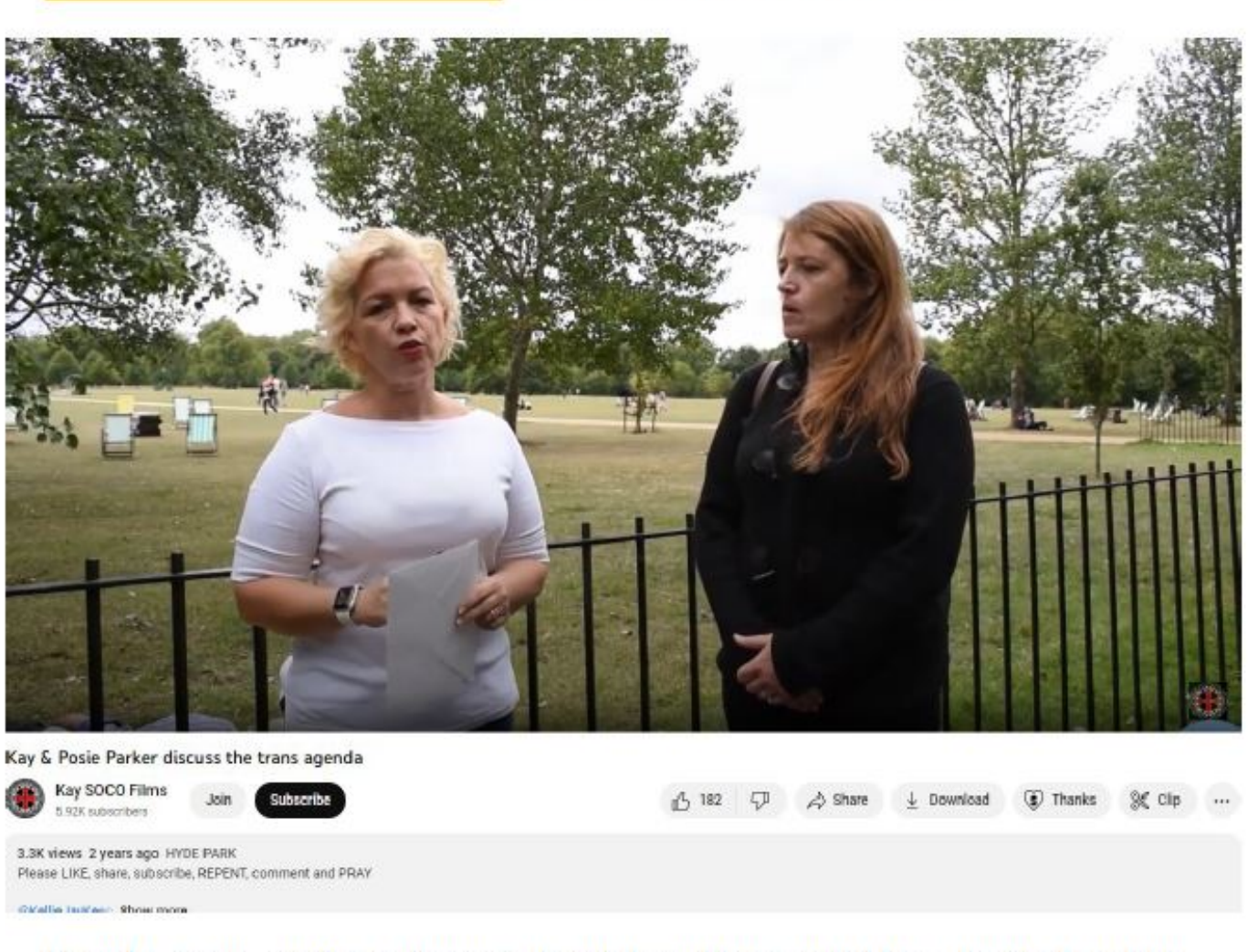
In videos attempting to prove white superiority and calling for all-white separatist states and a crackdown on immigration, Gariépy's guests have included former Ku Klux Klan leader David Duke and known neo-Nazi Mark Collett. During his livestream with Gariépy, Duke made several anti-Semitic comments.

Gariépy's latest guest was Posie Parker, also known as Kellie-Jay Keen-Minshull – one of the most prominent voices of the UK's "gender-critical feminism" (or "terf") movement.

Despite his well-known white nationalist views – plus court documents uncovered by the *Daily Beast* that reveal Gariépy has been accused of "luring and attempting to impregnate a developmentally disabled Hispanic teenager while lawyers contested his U.S. immigration status" – women on UK parenting forum Mumsnet, the home of much "gender-critical feminist" conversation online, praised Parker for appearing on his YouTube channel.

"'Far-right' always gets thrown around as an insult," one Mumsnet user said. "Where are the left on this issue? Throwing women and children under the bus is where."

8. In 2019, Keen gave an interview to Soldiers of Christ Online, a far-right network: see Elliards, Xander (4 February 2023). "Who is Posie Parker? The controversial anti-trans activist heading to Scotland". *The National* (Scotland), see also:



Kay & Posie Parker discuss the trans agenda

Kay SOCO Films

5.92K subscribers

3.3K views 2 years ago HYDE PARK

Please LIKE, share, subscribe, REPENT, comment and PRAY

9. In 2019, Keen posted a photograph on the internet with Hans Jørgen Lysglimt Johansen, a Norwegian neo-Nazi who was probed by police after his comments against Jews and denial of the Holocaust:[2] see Elliards, Xander (4 February 2023). "Who is Posie Parker? The controversial anti-trans activist heading to Scotland". *The National* (Scotland).

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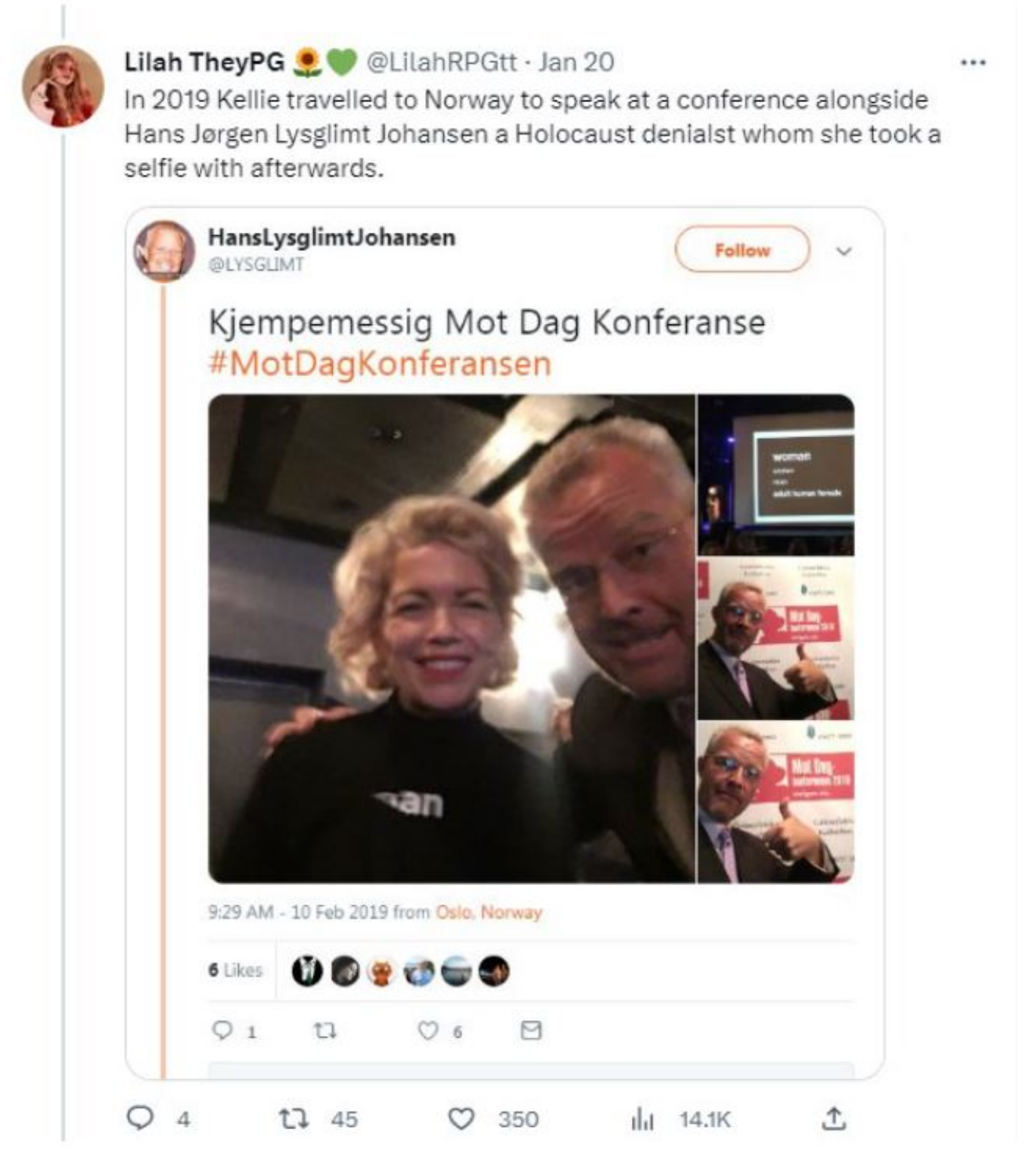
[2]



Lilah TheyPG 🌻💚 @LilahRPGtt · Jan 20

In 2019 Kellie travelled to Norway to speak at a conference alongside Hans Jørgen Lysglimt Johansen a Holocaust denialst whom she took a selfie with afterwards.

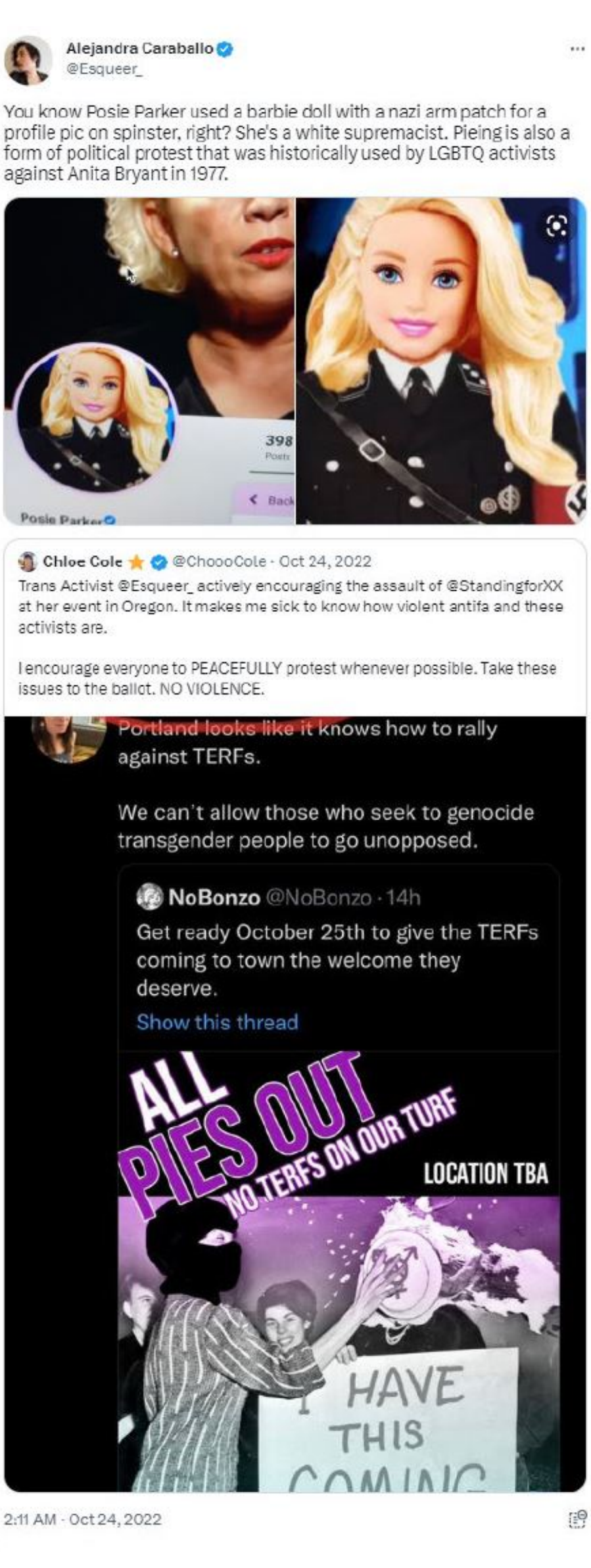
HansLysglimtJohansen @LYSGLIMT

Kjempemessig Mot Dag Konferanse #MotDagKonferansen

9:29 AM - 10 Feb 2019 from Oslo, Norway

6 Likes

10. Keen was accused of using a Barbie doll wearing a Nazi uniform as her profile picture on the social media site Spinster: see Elliards, Xander (4 February 2023). "Who is Posie Parker? The controversial anti-trans activist heading to Scotland". *The National* (Scotland). The following image was retrieved from an internet archive:



Alejandra Caraballo @Esqueer_

You know Posie Parker used a barbie doll with a nazi arm patch for a profile pic on spinster, right? She's a white supremacist. Pieing is also a form of political protest that was historically used by LGBTQ activists against Anita Bryant in 1977.

Chloe Cole ⭐ @ChoooCole · Oct 24, 2022

Trans Activist @Esqueer_ actively encouraging the assault of @StandingforXX at her event in Oregon. It makes me sick to know how violent antifa and these activists are.

I encourage everyone to PEACEFULLY protest whenever possible. Take these issues to the ballot. NO VIOLENCE.

Portland looks like it knows how to rally against TERFs.

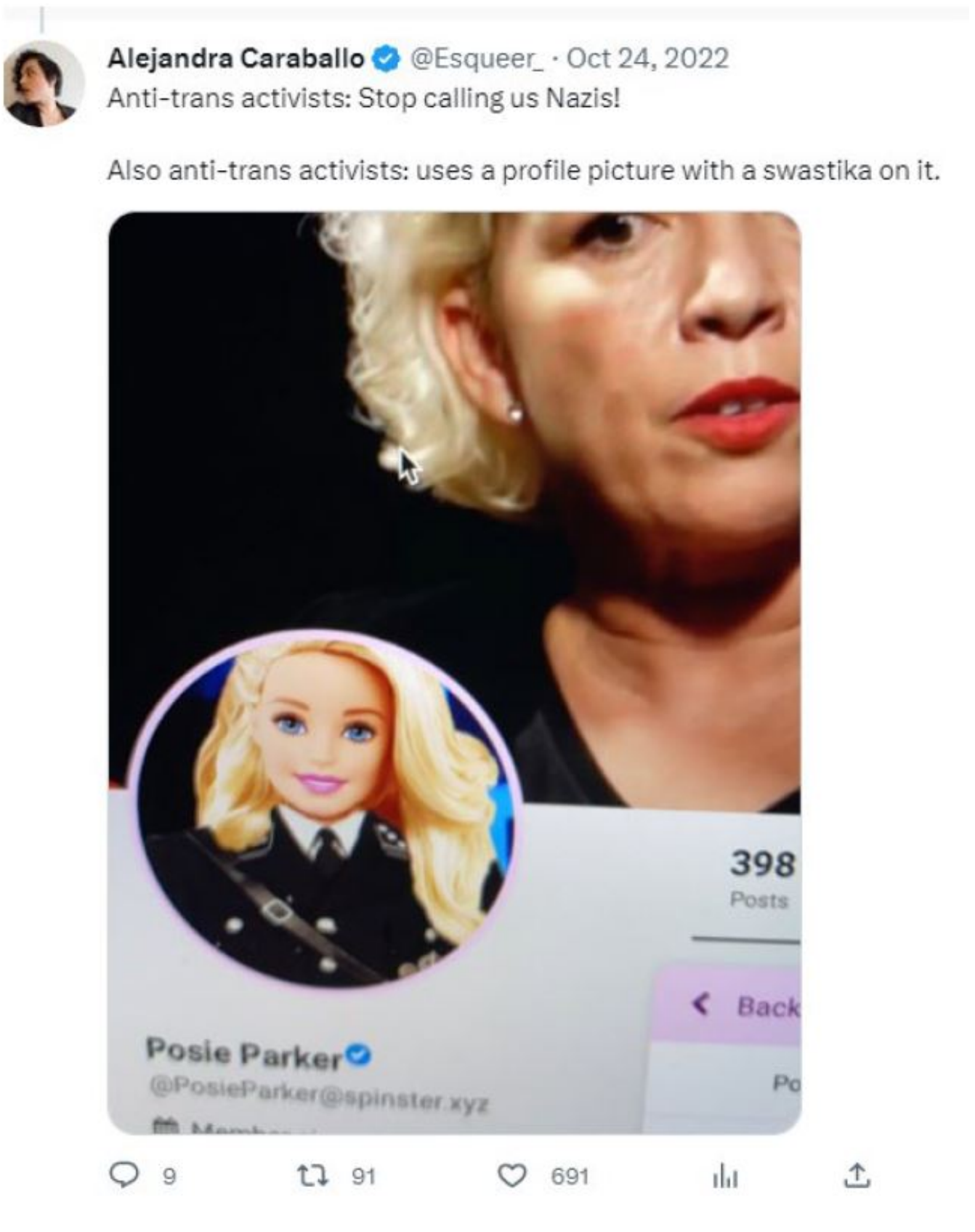
We can't allow those who seek to genocide transgender people to go unopposed.

NoBonzo @NoBonzo · 14h

Get ready October 25th to give the TERFs coming to town the welcome they deserve.

Show this thread

2:11 AM · Oct 24, 2022



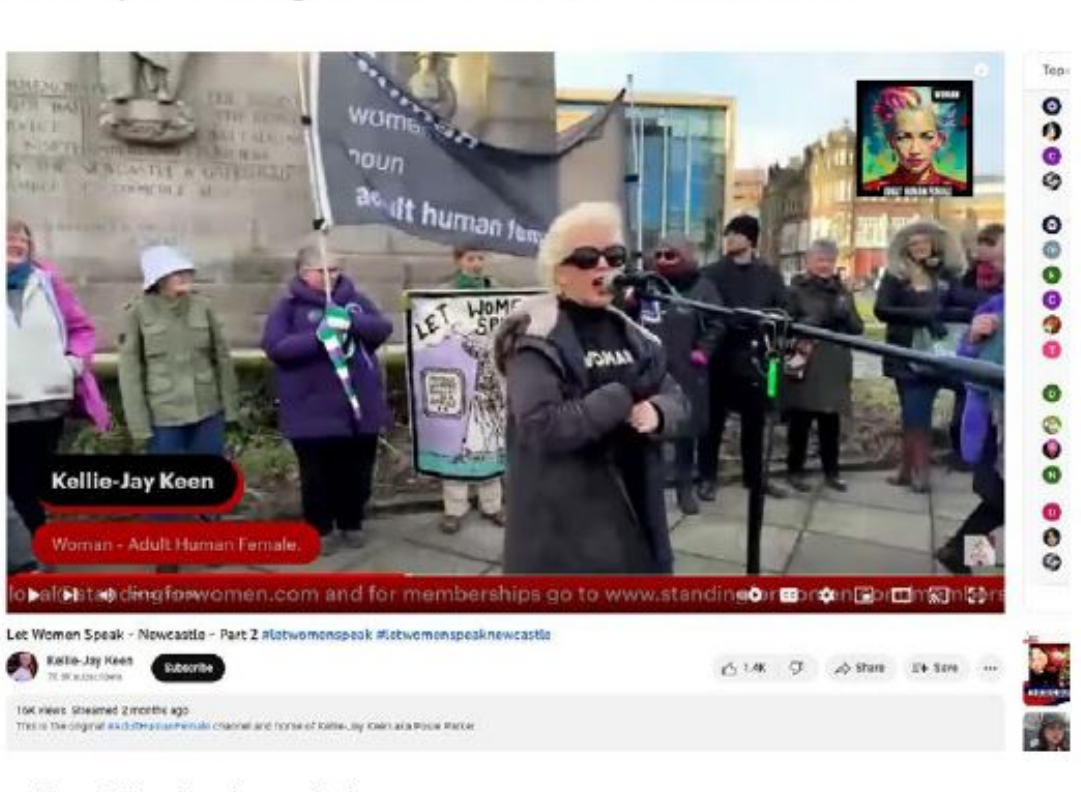
Alejandra Caraballo @Esqueer_ · Oct 24, 2022

Anti-trans activists: Stop calling us Nazis!

Also anti-trans activists: uses a profile picture with a swastika on it.

11. On 16 January 2023, at an event for Keen's Standing for Women's group in Newcastle, United Kingdom, one of the speakers, Lisa Morgan, quoted Adolf Hitler

as follows "Do you know the big lie? The big lie was first described by Adolf Hitler in Mein Kampf … The big lie is that trans women are women".[3]



Let Women Speak - Newcastle - Part 2 #letwomenspeak #letwomenspeaknewcastle

Kellie-Jay Keen

12. See the following hyperlinks:

Let Women Speak - Newcastle - 15/01/23 - Lisa Morgan - YouTube

Let Women Speak - Newcastle - Part 2 #letwomenspeak #letwomenspeaknewcastle - YouTube

13. On 18 March 2023, a group of neo-Nazis, organized by the National Socialist Network, performed the Nazi salute on the steps of Parliament House and displayed a banner which read "DESTROY PAEDO FREAKS".[4]

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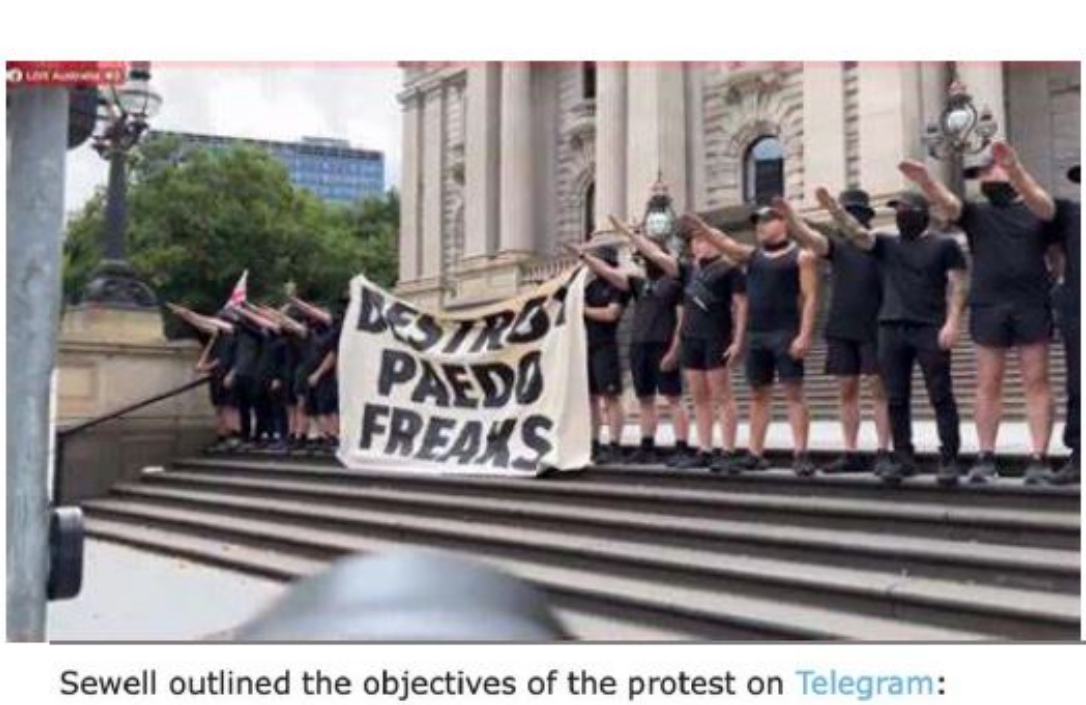
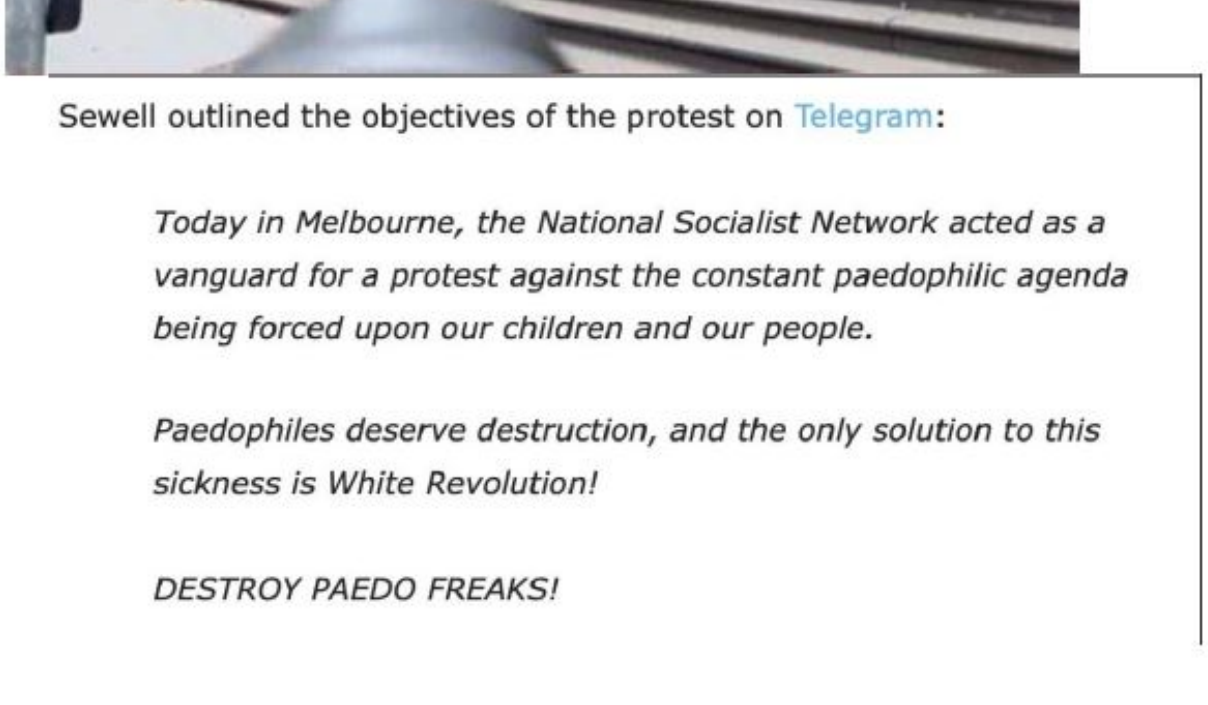
[3] Elliards, Xander (4 February 2023). "Who is Posie Parker? The controversial anti-trans activist heading to Scotland". *The National* (Scotland).

[4] Anderson, Anthony (18 March 2023). "Anti-trans speaker's fans throw Nazi salute amid counter-protest". News.com.au.

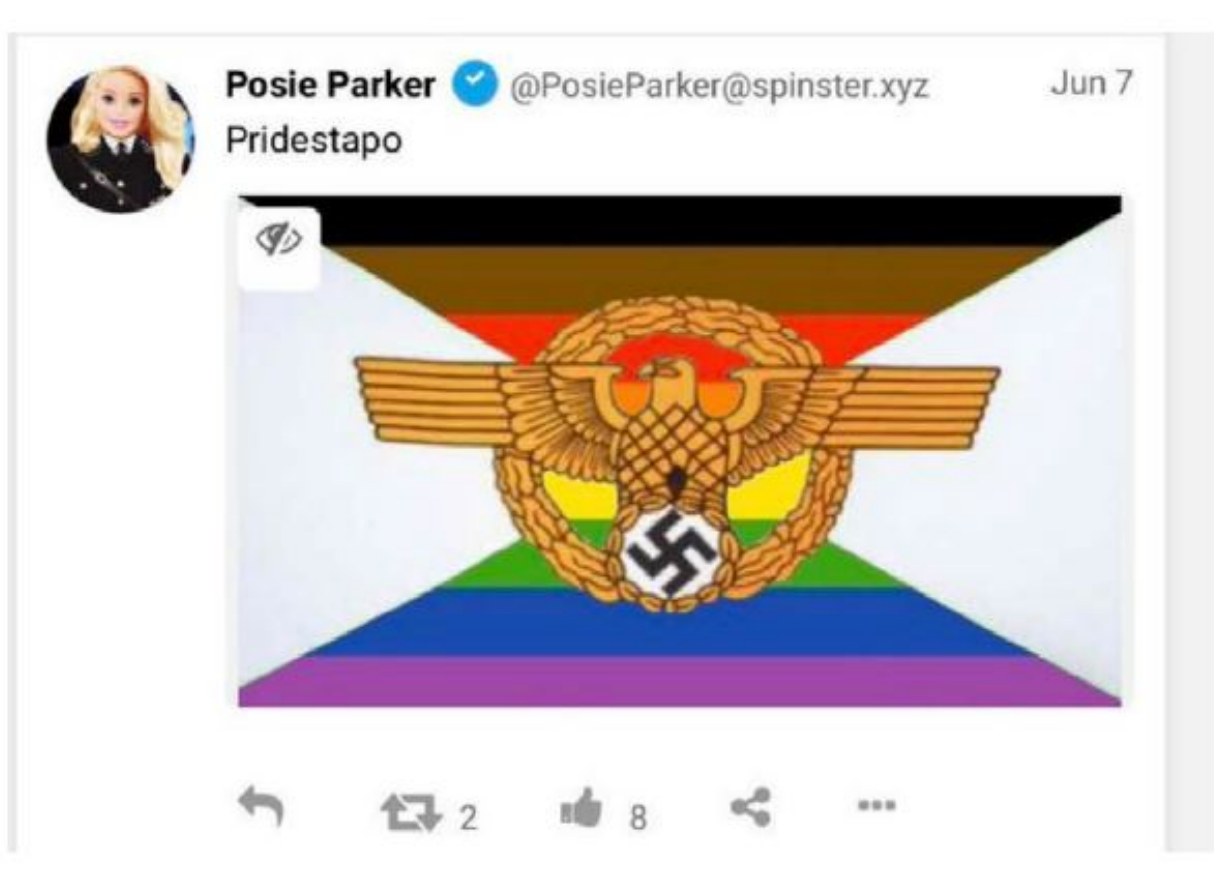




Sewell outlined the objectives of the protest on Telegram:

> *Today in Melbourne, the National Socialist Network acted as a vanguard for a protest against the constant paedophilic agenda being forced upon our children and our people.*
>
> *Paedophiles deserve destruction, and the only solution to this sickness is White Revolution!*
>
> *DESTROY PAEDO FREAKS!*

14. The following image was retrieved from an internet archive:



Posie Parker @PosieParker@spinster.xyz Jun 7

Pridestapo

C. Meeting, Video and Twitter Posts Following the 18 March 2023 Rally

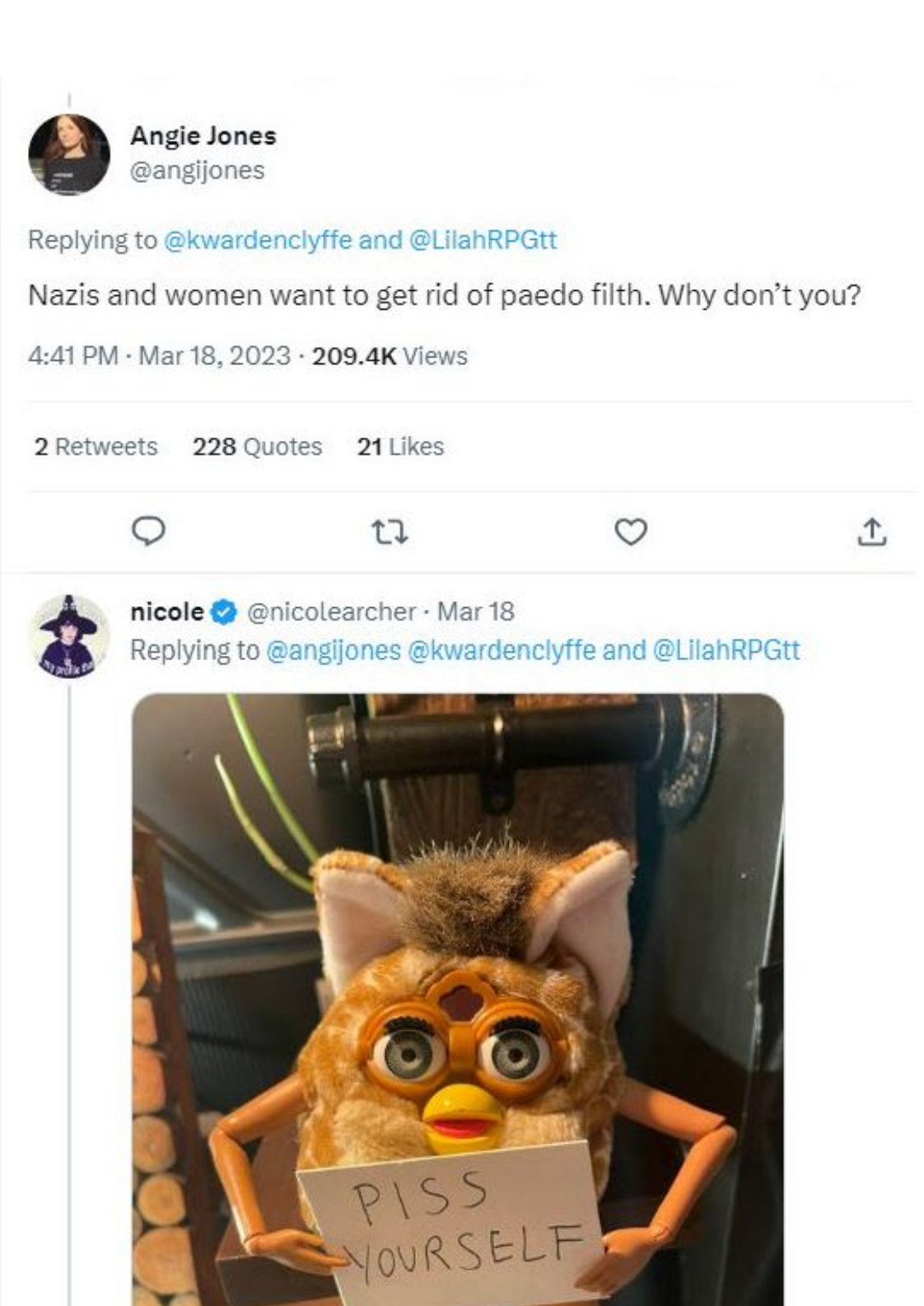
15. On 18 March 2023, Ms Deeming met with and appeared in a video following the rally, drinking champagne with Kellie-Jay Keen, Katherine Deves and Angie Jones.

16. See the following hyperlink:

https://www.youtube.com/watch?v=M4lZ5u8uws4

17. In the video, Ms Deeming and Keen did not roundly condemn the men who made the Nazi salute and dissembled by seeking to question whether those men were organised by the trans-rally participants or were assisted police.

18. At 4.41pm on 18 March 2023, Angie Jones posted to Twitter the words "Nazis and women want to get rid of paedo filth. Why don't you?."



Angie Jones
@angijones

Replying to @kwardenclyffe and @LilahRPGtt

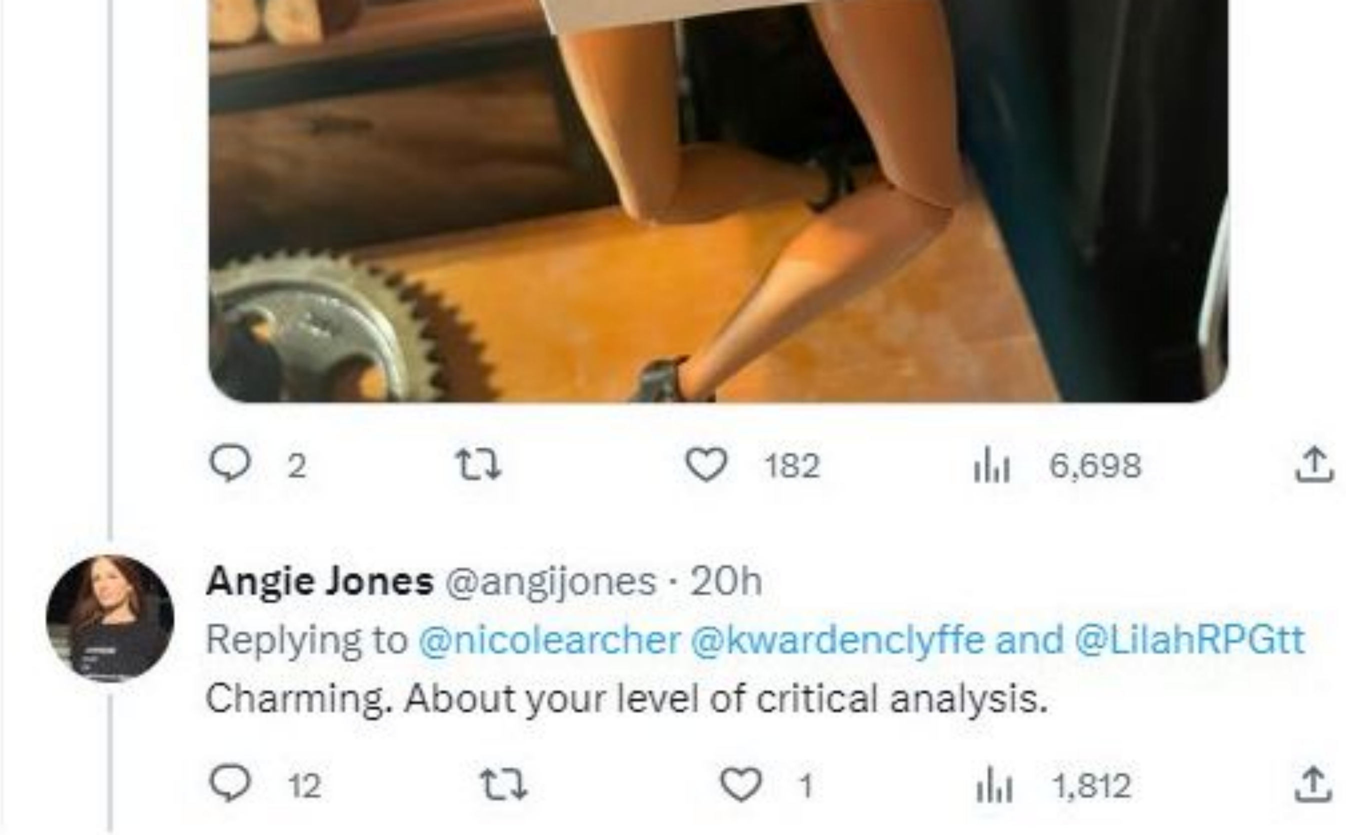
Nazis and women want to get rid of paedo filth. Why don't you?

4:41 PM · Mar 18, 2023 · **209.4K** Views

2 Retweets **228** Quotes **21** Likes

nicole @nicolearcher · Mar 18

Replying to @angijones @kwardenclyffe and @LilahRPGtt



Angie Jones @angijones · 20h

Replying to @nicolearcher @kwardenclyffe and @LilahRPGtt

Charming. About your level of critical analysis.

Top

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